No. 16565

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GREAT FALLS EMPLOYERS' COUNCIL, INC., et al.,
Respondents.

Transcript of Record

Petition for Enforcement of an Order of the National Labor Relations Board

Phillips & Van Orden Co., Fourth and Berry Sts., San Francisco, Calif.—11-4-59

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-1459

GREAT FALLS EMPLOYERS' COUNCIL, INC., RETAIL FOOD DEALERS DIVISION, AND ITS MEMBER EMPLOYERS, BUTTREY FOODS, INC., SAFEWAY STORES, INC., Paul A. Matteucci, d/b/a MATTEUCCI'S SUPER SAVE MARKET, Paul A. Matteucci, d/b/a SOUTHGATE SUPER SAVE MARKET, John Eustance, d/b/a WHITE HOUSE GROCERY, Robert Noble and John H. Noble, d/b/a NOBLE MERCANTILE COMPANY, E. R. Fjelstad, d/b/a AL'S FOOD MARKET, Wallace Anderson, d/b/a WALLY'S SUPERETTE,

and

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL No. 57, AFL-CIO.

COMPLAINT

It having been charged by Retail Clerks International Association, Local No. 57, AFL-CIO, that Great Falls Employers' Council, Inc., Retail Food Dealers Division, and its member-employers, But-

trey Foods, Inc., Safeway Stores, Inc., Matteucci's Super Save Market, Southgate Super Save Market, White House Grocery, Noble Mercantile Company, Al's Food Market, and Wally's Superette have engaged in and are now engaging in certain unfair labor practices affecting commerce, as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, (herein called the Act), the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

Great Falls Employers' Council, Inc., Retail Food Dealers Division, hereinafter referred to as Division, is and has been an Association of member-employers engaged in the retail sale of foods in Great Falls, Montana, and is and has been the agent of its member-employers in representing them in collective bargaining and adjustment of grievances with labor organizations. The gross annual retail sales of its member-employers exceeds $10,000,000 and their gross annual purchase of merchandise delivered to them from sources outside the State of Montana exceed $1,000,000 for goods shipped directly to them and exceed $2,000,000 for goods previously shipped in from out of state but sold and delivered to them from local warehouses.

II.

The Division has as its member-employers the following firms, hereinafter referred to by their trade names, whose ownership is shown as follows:

(1) Buttrey Foods, Inc., a corporation.

(2) Safeway Stores, Inc., a corporation.

(3) Matteucci's Super Save Market, owned by Paul A. Matteucci.

(4) Southgate Super Save Market, owned by Paul A. Matteucci.

(5) White House Grocery, owned by John Eustance.

(6) Noble Mercantile Company, owned by Robert Noble and John H. Noble.

(7) Al's Food Market, owned by E. R. Fjelstad.

(8) Wally's Superette, owned by Wallace Anderson.

III.

The Division and the member-employers, hereinafter referred to collectively as Respondents, are engaged in business which is in commerce and affect commerce within the meaning of Section 2 (6) and (7) of the Act.

IV.

International Retail Clerks Association, Local No. 57, AFL-CIO, hereinafter called Union, is organized for the purpose, in part, of representing employees in the employ of Respondents in collective bargaining with Respondents, respecting wages, hours, and working conditions, and has its principal

office in Great Falls, Montana, and is a labor organization within the meaning of Section 2 (5) of the Act.

V.

The following unit of employees is appropriate for collective bargaining and has been the unit with respect to which there has been bargaining between the Division and the Union since 1954:

All sales clerks, checkers, grocery or produce clerks, receiving or shipping clerks, stock clerks, order clerks, light parcel delivery men, jumpers, box boys, sackers and wrappers of employers in the Retail Food Dealers Division of the Great Falls Employers' Council, excluding supervisory employees as defined in the Act.

VI.

The Union at all times material has been and is the bargaining representative chosen by a majority of the employees in the unit described above.

VII.

The Division and the Union from January to April, 1957, were bargaining collectively to modify and amend some terms in their 1955-1957 agreement, to be effective April 1, 1957.

VIII.

The collective bargaining of the Division and the Union continued until April 12, 1957, at which time the Union and the Division had rejected the offers of one another.

IX.

On April 13, the Union instituted strike action to induce acceptance of its last proposal, by them withdrawing the employees and picketing the three stores of one member-employer, namely, Buttrey Foods, Inc. Prompted by this picketing of this member-employer, and to preserve the unity of their position, the remaining member-employers of the Division acting in concert and pursuant to instructions of their Division, suspended from employment and sent home, thereby locking out, all their employees in the unit represented by the Union. Additionally, the Respondent's withdrew all proposals for a collective bargaining agreement and announced there would be no further observance of any terms or conditions which existed under the acceptable provisions of the prior agreement, except only the wage rates being paid and the accruing vacation rights.

X.

The locked out employees of the member-employers on the next business day applied to the Montana Unemployment Compensation Commission for benefits due to their lack of employment, and did so pursuant to instructions given them by their Union. The Respondents forthwith protested to said Commission against any payment of benefits to the locked out employees. Additionally, to defeat all claims, the Respondents elected to make the lockout intermittent by providing work to each locked out employee sufficient to pay to each a wage in an

amount that would disqualify that employee from receiving benefits as unemployment compensation which if paid would approximate double that amount.

XI.

The locked out employees, being those of all member-employers except Buttrey Foods, Inc., listed under the names of their respective employers, were the following:

Safeway #1855—Central Ave.

Fate Brewer, Jr.
Glen Bridgeford
Richard Konesky
Leonard Moyer
Ben Peterson
Helen Pittman
Billy B. Young

Safeway #1856—North

Arlene Bauer
Margaret Clausen
Deloris Daniels
Robert A. Dull
Jean Hallan
Richard L. Hamers
Lydell Jurasek
Keith E. Keller
Phil A. Keller
Cecelia Krall
June M. Leiby
Jack McConnel
Neil J. McRorie
Stanley A. Marko
Patrick Lyons
Aaron Peterson
David S. Scott
John Scott
Grace Simonton
Joseph Super
Lionel Swenson, Jr.
Alice Lorraine Tenney

Noble Mercantile

William Gosney
Alta Kopetski

Safeway #1857—West Side

Rose Marie Andrews
Marion R. Crawford
Herbert F. Hart
Patrick O'Connell
Peder G. Pederson
Joyce Ann Perrigo
William Puzon
Arthur L. Raunig, Jr.
Dorothy K. Rio
Freeda Rosbarsky
Donna J. Sanders
Frank Searl
Margaret Tempel
Leah Walbon

Safeway #1865—South East

Louise Armstrong
Helen M. Axtman
Verna Brown
Charles Bundi
Charlotte Golberg
Jack Itami
Frances E. Kelly
Irmen L. D. Knerr
Nettie Korin
Alvin Ladd
Peter K. Meras
Dan Meyer
Joseph Meyer
Paul Pfeifle

Al's Food Market

Lucille Sowa
Clarice Klundt

Super Save Market

Verlyn Brown
Joseph Chambers
Lorrin A. Darby
Gayle Garrity
Richard Gasvoda
Charlene Gleason
Everett W. Greenbush
Patsy A. Holmes
Arlee Javner
Gertrude Kendall
Barbara Koesler
Doris Madison
Irene I. Major
Thomas S. Marshall
Jerry Mitchell
Doris Paulson
Donn Peterson
George F. Potts
Robert E. Purcell
Elmer Riley

Super Save Market—(Continued)

Dewain D. Ryan
Darell D. Schwen
Daryl A. Soltesz
Leonard J. Weaving
Stuart Wilson

South Gate Super Save Market

Madlee Anderson
Helen M. Burns
Helen P. Gabbert
Lucille Habel
Tony Kraft
Robert C. Gill
Ken Roeben, Jr.
Wilford G. Smith
Stanley L. Timms
Helen Wheeler

White House Grocery

Joett E. Aman
Rose Cadieux
Harry Kimmerle
Laurence Love
Georgia Vining

Wally's Superette

Lester Oswald

XII.

The listed employees were called to work in the work weeks following April 13, on April 19 and 20 and on April 26 and 27, until settlement of the strike on the latter date, pursuant to the planned intermittent lockout, except for the employees of Al's Food Market and Wally's Superette who were given continuing employment when recalled on April 19.

XIII.

The action of the Respondents described above was taken in executing their concerted efforts to

induce the Union and its members to abandon their strike and to dissuade the members from further participation in concerted action for their mutual aid and protection.

XIV.

The action of the Respondents described above, relating to the acceptable terms and conditions of employment not then subject to negotiation, was taken unilaterally when Respondents were obliged to negotiate on all changes in terms and conditions with the Union, and Respondents' action in withdrawing all proposals on terms under negotiation was taken to disrupt negotiations, and Respondent's action in instituting the intermittent employment and whipsaw lockout, was taken to harass and impede the bargaining agent and its members in the course of negotiations, and constituted bad faith bargaining and a refusal to bargain in good faith with the union, and thereby the Respondents have been and are violating Section 8 (a)(5) of the Act.

XV.

The action of the Respondents described above, relating to the intermittent employment and whipsaw lockout, when used as a counter measure against the strike and in bargaining, did discriminatorily deny regular employment to the listed employees named above to discourage membership in and adherence to the Union, and thereby Respondents have been and are violating Section 8 (a)(3) of the Act.

XVI.

The action of the Respondents described above, in refusing to bargain in good faith with the Union, and in locking out the listed employees in the circumstances described above, and disqualifying them from unemployment compensation, and in the Respondent's related actions and conduct, has been and is interfering with, restraining, and coercing their employees in the exercise of rights under Section 7, and thereby Respondents are and have been violating Section 8 (a)(1) of the Act.

XVII.

The acts and conduct of Respondents as set forth above are unfair labor practices that have occurred and are occurring in connection with their operations as described in paragraphs I, II, and III above, and have a close, intimate, and substantial relation to trade, traffic, and commerce between the several states of the United States and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Sections 2 (6) and (7) and 8 (a)(1), (3), and (5) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director of the Nineteenth Region, issues this Complaint against the Respondents above named, on this 11th day of October, 1957.

THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Region 19.

[Title of Board and Cause.]

ANSWER

The respondents Great Falls Employers' Council, Inc., Retail Food Dealers Division, and its member employers, Buttrey Foods, Inc., Safeway Stores, Inc., Paul A. Matteucci, d/b/a Matteucci's Super Save Market, Paul A. Matteucci, d/b/a Southgate Super Save Market, John Eustance, d/b/a White House Grocery, Robert Noble and John H. Noble, d/b/a Noble Mercantile Company, E. R. Fjelstad, d/b/a Al's Food Market, Wallace Anderson, d/b/a Wally's Superette, by way of answer to the complaint issued in the above entitled cause, admit, deny and allege as follows:

I.

Admit the allegations contained in paragraph I thereof.

II.

Deny that Wally's Superette is now a member-employer of Division, but admit the remaining allegations set forth in paragraph II thereof.

III.

Admit the allegations contained in paragraph III thereof.

IV.

Deny the allegations contained in paragraph IV thereof.

V.

Admit the allegations contained in paragraph V thereof.

VI.

Admit the allegations contained in paragraph VI thereof.

VII.

Deny the allegations contained in paragraph VII thereof. Affirmatively allege that prior to 1 April 1955, Division and union were parties to a collective bargaining agreement. On 29 January 1957, Union served on Division the notice attached hereto as Exhibit "A" and by this reference made a part hereof. That paragraph or section 19 of the agreement referred to in said notice provided in part as follows:

> "The provisions of this agreement shall become effective on 1 April 1955 and shall remain in full force and effect through 31 March 1957 and yearly thereafter from 1 April through 31 March unless one of the parties hereto shall serve notice in writing upon the other party hereto not less than sixty (60) days prior to its expiration date or any anniversary thereafter. If such notice is served by either party hereto, this agreement shall terminate upon its expiration date."

On 8 February 1957, Division served on Union the notice attached hereto as Exhibit "B" and by this

reference made a part hereof. As a result of said notice and counter-notice, Division and Union bargained collectively from 29 January through 12 April 1957 in an attempt to reach an accord on an entirely new agreement to become effective at such time after 31 March 1957 as might be mutually acceptable.

VIII.

Admit the allegations contained in paragraph VIII of the complaint.

IX.

A) Admit the allegations contained in paragraph IX of the complaint stating that "On April 13, the Union instituted strike action to induce acceptance of its last proposal, by then withdrawing the employees and picketing the three stores of one member-employer, namely, Buttrey Foods, Inc. Prompted by this picketing of this member-employer, and to preserve the unity of their position, the remaining member-employers of the Division acting in concert and pursuant to instructions of their Division, suspended from employment and sent home, thereby locking out, all their employees in the unit represented by the Union." Deny all other allegations set forth in such paragraph IX.

B) Affirmatively allege that on 16 April 1957, Division caused to be delivered to Union the notice attached hereto as Exhibit "C" and by this reference made a part hereof.

X.

A) Admit the allegations contained in paragraph X of the complaint stating that "The locked out employees of the member-employers on the next business day applied to the Montana Unemployment Compensation Commission for benefits due to their lack of employment, and did so pursuant to instructions given them by their Union. The Respondents forthwith protested to said Commission against any payment of benefits to the locked out employees." Deny all other allegations set forth in such paragraph X.

B) Affirmatively allege that on 19 April 1957 all employer-members of Division except Buttrey Foods, Inc., offered all employees who had been locked out, temporary re-employment under the conditions set forth in Division's letter to Union and attached hereto as Exhibit "C". On 20 April 1957 Union attempted to further impair the interest of the member-employers of Division in bargaining on a group basis by circumventing Division and by transmitting directly to all of its member-employers the notice attached hereto as Exhibit "D" and by this reference made a part hereof, disparaging unified employer efforts and inviting separate bargaining.

C) Affirmatively allege that on 22 April 1957 the employer-members of Division failed to recall to work the employees who had been recalled for work on 19 and 20 April 1957. Allege that they failed to recall such employees to work at the insistence of

the struck stores Buttrey Foods, Inc. and in order to prevent the disintegration of their unity in the face of pressure from the struck stores and overtures by the Union to the employer-members in their individual capacities. Admit that in recalling the locked-out employees to work on 19 and 20 April 1957 and again on 26 and 27 April 1957 they were aware and had been advised that such action would prejudice the ability of such employees to secure unemployment compensation for the weeks of 14-20 April and 21-27 April 1957, if under the laws of the State of Montana and the rules, regulations and decisions of the Unemployment Compensation Commission of the State of Montana, such employees were otherwise qualified for compensation.

XI.

A) With respect to the allegations contained in paragraph XI of the complaint, respondents deny that the following named persons were locked-out:

1) Delores Daniels, Keith E. Keller, Verna Brown, Clarice Klundt, Joseph Chambers, Arlee Javner and Elmer Riley.

2) Richard Konesky, Leonard Moyer, Ben Peterson, Robert A. Dull, Stanley A. Marko, Patrick Lyons, Aaron Peterson, John Scott, Joseph Super, Marion R. Crawford, William Puzon, Frank Searle, Charles Bundi and Dan Meyer.

B) Respondents affirmatively allege that the persons specified in Group 1) above were not employed by any of the employer-members of Division at any time material hereto. Respondents affirmatively al-

lege that the persons specified in Group 2) above were not "regular" employees but were "call-in" or "part-time" employees, worked on an intermittent basis and that no action taken by the employer-members of Division at any time material hereto denied any of such persons employment to which they would otherwise have been entitled.

XII.

A) With respect to the allegations contained in paragraph XII of the complaint, respondents admit that the employees of Al's Food Market and Wally's Superette were given continuous employment after 19 April 1957. Respondents deny all other allegations set forth in paragraph XII of such complaint.

B) Respondents affirmatively allege that all of the employees listed in paragraph XII of the complaint except those identified as Group 1) in paragraph XI of this answer, were offered temporary employment on 19 and 20 April 1957, and again on 26 and 27 April 1957; that the employment on 27 April 1957 became regular by virtue of the fact Union and Division reached an accord on a new agreement on that day and the employment of those persons working on that day was made subject to such agreement.

XIII.

A) Deny the allegations set forth in paragraph XIII thereof.

B) Affirmatively allege that the action of respondents taken with respect to members of Union

between 12 and 27 April 1957 was taken to induce the Union to either strike all employer-members of Division or none.

XIV.

A) Deny the allegations set forth in paragraph XIV thereof.

B) Affirmatively allege that no collective bargaining agreement was in force and effect between Union and Division from and after 31 March 1957; that on and after 1 April 1957, all working terms and conditions of members of Union employed by employer-members of Division were open for negotiation and the appropriate subject of collective bargaining; that from 1 April through 12 April 1957 all terms and conditions expressed in the agreement which expired on 31 March 1957 were continued in effect by the tacit agreement of Division and Union; that on 13 April 1957, Union unilaterally modified the terms so continuing in effect, without notice to Division or its employer-members, by going on strike; that the modifications effected by Division and its member-employers (as set forth in Exhibit "C") were effected after notice to Union; that to require negotiation or collective bargaining by Division and Union before Division might effect such modifications under such circumstances is the equivalent of requiring the consent of Union to such modifications when no such requirement is imposed by the Labor-Management Relations Act of 1947, as amended; that Union was free to take such economic sanctions as it deemed appropriate either as

a defensive or retaliatory measure to Division's modifications; that such modifications and that all conduct of Division and its employer-members between 13 and 26 April 1957 facilitated and encouraged collective bargaining between Union and Division in that on 26 April 1957, and at no time prior to that, between 13 and 26 April 1957, Union requested a resumption of collective bargaining to which Division and its member-employers readily acceded and as a result of which an accord was reached on 27 April 1957.

XV.

A) Deny the allegations contained in paragraph XV of the complaint.

B) Affirmatively allege that when re-employment of the employees of Division's employer-members was offered on 19 and 20 and on 26 and 27 April 1957, as set forth in paragraph XII above, it was offered, without discrimination, to all employees.

C) Affirmatively allege that Division and its employer-members would have met similar concerted tactics on the part of non-union employees with the same defensive measures as those employed between 13 and 27 April 1957.

XVI.

A) Deny the allegations contained in paragraph XVI of the complaint.

B) Affirmatively allege that Division and its employer-members did not disqualify any employee

locked-out from unemployment compensation benefits under the laws of the State of Montana and under the rules, regulations and decisions of the Unemployment Compensation Commission of the State of Montana; affirmatively allege that under such law, rules, regulations and decisions Union disqualified from benefits any employees who were locked out by calling on strike that portion of the unit of employees employed by Buttrey Foods, Inc.

C) Affirmatively allege that the latest law of the State of Montana and the latest rules, regulations and decisions of the Unemployment Compensation Commission of the State of Montana pertinent to the payment of and the disqualification from unemployment benefits under the circumstances set forth in the complaint and this answer are as set forth in Exhibit "E" attached hereto and by this reference made a part hereof.

D) Affirmatively allege that the only impact of the conduct of Division and its employer-members upon the payment of any unemployment compensation benefits to which any locked-out employee might otherwise have been entitled, was to defer such payment pending appeal and final determination by the Unemployment Compensation Commission of the State of Montana.

XVII.

Deny the allegations set forth in paragraph XVII of the complaint.

As a separate and distinct affirmative defense, respondents allege as follows:

I.

The complaint issued in this cause is based upon amended charges executed and filed by Paul W. Hansen, International Vice President, RCIA on 11 October 1957. The charges so filed constitute a material variance from the original charges filed on 24 April 1957 by E. J. Rule, Corresponding and Financial Secretary of Retail Clerks International Association, Local Union No. 57, of Great Falls, Montana, the charging party, and thus constitute fresh or new charges.

II.

Retail Clerks International Association, Local Union No. 57 of Great Falls, Montana, the charging party, and the Retail Clerks International Association are separately chartered and are separate and distinct labor organizations within the meaning of the Labor-Management Relations Act of 1947, as amended.

III.

Respondents are informed and believe, and therefore state that Paul W. Hansen, as an International Vice President of Retail Clerks International Association, has no authority, by virtue of his office or the by-laws or constitution of either labor organization, to undertake the representation of Retail Clerks International Association, Local Union No. 57 in the filing of unfair labor charges, and cannot so act in the absence of specific authority so conferred upon him by Retail Clerks International Association, Local Union No. 57 of Great Falls, Montana.

IV.

Respondents are informed and believe, and therefore state that Paul W. Hansen was never authorized by Retail Clerks International Association, Local Union No. 57 of Great Falls, Montana to file the amended charges upon which the complaint in this cause is based; that such charges, as a result are not the charges of Retail Clerks International Association, Local Union No. 57 of Great Falls, Montana; that such charges having been improperly filed cannot act as the basis for the complaint issued in this cause and that the complaint in this cause and the issuance of any subsequent complaint in said cause are barred by the provisions of Section 10 (b) of the Labor Management Relations Act of 1947, as amended, more than six (6) months having elapsed since the date of the acts complained of.

GREAT FALLS EMPLOYERS'
COUNCIL, INC.,
/s/ By L. C. HARRIS,
Secretary,

On its own behalf and on behalf of Retail Food Dealers Division, and its member employers, Buttrey Foods, Inc., Safeway Stores, Inc., Paul A. Matteucci, d/b/a Matteucci's Super Save Market, Paul A. Matteucci, d/b/a Southgate Super Save Market, John Eustance, d/b/a White House Grocery, Robert Noble and John H. Noble, d/b/a Noble Mercantile Company, E. R. Fjelstad, d/b/a Al's Food Market, Wallace Anderson, d/b/a Wally's Superette.

State of Montana
County of Cascade—ss.

L. C. Harris, being first duly sworn, on his oath deposes and says:

He is the duly appointed, qualified and acting Secretary of Great Falls Employers' Council, Inc., a corporation authorized and existing under the laws of the State of Montana.

He makes this verification on behalf of Great Falls Employers' Council, Inc. and as one of its duly authorized representatives.

Great Falls Employers' Council, Inc. has been appropriately authorized to represent those of its employer-members who have been named in the above entitled cause as respondents.

He has read the within and foregoing answer, knows the contents thereof, and the matters therein set forth are true to the best knowledge, information and belief of affiant.

/s/ L. C. HARRIS.

Subscribed and Sworn to before me this 23rd day of October, 1957.

[Seal] /s/ MARY ANN LENNON,

Notary Public for the State of Montana, Residing at Great Falls, Montana. My Commission Expires 21 January 1960.

[Title of Board and Cause.]

STIPULATION

It is stipulated and agreed by and between Great Falls Employers' Council, Inc., Retail Food Dealers Division, and its member-employers, Buttrey Foods, Inc., Safeway Stores, Inc., Paul A. Matteucci, d/b/a Matteucci's Super Save Market, Paul A. Matteucci, d/b/a Southgate Super Save Market, John Eustance, d/b/a White House Grocery, Robert Noble and John H. Noble, d/b/a Noble Mercantile Company, E. R. Fjelstad, d/b/a Al's Food Market, and Wallace Anderson, d/b/a Wally's Superette (herein called Respondents) and Retail Clerks International Association, Local No. 57, AFL-CIO (herein called the Union or Charging Party), and Melton Boyd, Counsel for the General Counsel of the National Labor Relations Board:

That the hearing fixed herein for December 9, 1957 shall be postponed, subject to the order of the Regional Director for the Nineteenth Region, to permit action by the National Labor Relations Board (herein called the Board) with respect to the submission of this matter by this Stipulation, which includes a statement of agreed facts;

That the parties waive a hearing before a Trial Examiner, the making of findings of fact and conclusion of law by a Trial Examiner, and issuance of an Intermediate Report and Recommended Order, and agree to submit this case for findings of fact, conclusions of law, and order directly by the Board, and to the transfer of this proceeding to

the Board for exercise of its power under Section 102.50 of the Rules and Regulations of the Board, Series 6, as amended;

That this Stipulation shall be filed with the Board, and if the Board accepts it in lieu of a hearing, the Board shall fix a time within which the parties may file Briefs with it;

That this Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to it, and this Stipulation is subject to the approval of the Board and shall be of no force and effect until the Board has granted such approval;

That this Stipulation is made without prejudice to any objection that any party may have as to the materiality or competency of any fact stated herein, and there is reserved to each party the right to contend for the inferences to be drawn from the agreed facts, and to contend for the conclusions of law that are germane to the facts;

That a Complaint and Notices of Hearing were issued herein by the General Counsel on behalf of the Board, by the Regional Director for the Nineteenth Region, acting pursuant to authority recited in said Complaint, upon Charges and Amended Charges filed by the Union, each of which was duly served on the Respondents as shown in the attached General Counsel's Exhibit 1, which is incorporated herein by this reference;

That the Answer of the Respondents to the Complaint was duly filed with the Regional Director,

as shown and incorporated in General Counsel's Exhibit 1;

That the documents comprising General Counsel's Exhibit 1, together with this Stipulation, shall constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties;

That the Exhibits A, B, C, D, and E, attached to the Respondent's Answer, by this reference are incorporated in the following statement of agreed facts, and the additional Exhibits F through N, attached to this Stipulation, are by this reference incorporated in said statement of agreed facts, provided that there is reserved to each party the right to object to the relevancy or competency of any part of any Exhibit;

That the agreed facts are as follows:

I.

Great Falls Employers Council, Inc., hereinafter called Council, is a non-profit corporation organized and existing under the laws of the State of Montana, having as members various employers engaged in various businesses who are grouped in various divisions of the Council's operations. Council has a Retail Food Dealers Division, hereinafter referred to as Division, which is and has been an association of member-employers engaged in retail sales of food in Great Falls, Montana. This Division is and has been the agent of its member-employers in representing them in collective bar-

gaining and adjustment of grievances with labor organizations. The gross annual retail sales of its member-employers exceed $10,000,000 and their gross annual purchase of merchandise delivered to them from sources outside the State of Montana exceed $1,000,000 for goods shipped directly to them and exceed $2,000,000 for goods previously shipped in from out of state but sold and delivered to them from local warehouses.

II.

The Division at all times relevant hereto has had as its member-employers the following firms, hereinafter referred to by their trade-names, whose ownership is shown as follows:

(1) Buttrey Foods, Inc., a corporation.

(2) Safeway Stores, Inc., a corporation.

(3) Matteucci's Super Save Market, owned by Paul A. Matteucci.

(4) Southgate Super Save Market, owned by Paul A. Matteucci.

(5) White House Grocery, owned by John Eustance.

(6) Noble Mercantile Company, owned by Robert Noble and John H. Noble.

(7) Al's Food Market, owned by E. R. Fjelstad.

(8) Wally's Superette, owned by Wallace Anderson.

III.

The Division and the member-employers, hereinafter referred to collectively as Respondents, are

engaged in business which is in commerce and affect commerce within the meaning of Section 2 (6) and (7) of the Act.

IV.

Retail Clerks International Association, Local No. 57, AFL-CIO, hereinafter called Union, is organized for the purpose, in part, of representing employees in the employ of Respondents in collective bargaining with Respondents, respecting wages, hours, and working conditions, and has its principal office in Great Falls, Montana, and is a labor organization within the meaning of Section 2 (5) of the Act.

V.

The following unit of employees is appropriate for collective bargaining and has been the unit with respect to which there has been bargaining between the Division and the Union:

> All sales clerks, checkers, grocery or produce clerks, receiving or shipping clerks, stock clerks, order clerks, light parcel delivery men, jumpers, boxout boys, sackers and wrappers of employers in the Retail Food Dealers Division of the Great Falls Employers' Council, excluding supervisory employees as defined in the Act.

In 1948 the Division was known as the Retail Employers' Division of the Council, and was composed of all types of retail stores, which recognized and dealt with the Union as the authorized representa-

tive of their employees in a multi-employer bargaining unit. In 1954, by mutual consent of the employers involved, the Council, and the Union, that group of employers was divided into two segments and the Retail Food Dealers Division was formed for the purpose of collective bargaining respecting grocery clerks only. Since 1954 the Division has been recognized by and dealt with by the Union as composed of member-employers having in their employ an appropriate multi-employer unit of employees.

VI.

The Union at all times material has been and is the bargaining representative chosen by a majority of the employees in the unit described in paragraph V.

VII.

On or about 22 April 1955, Division and the Union executed a collective bargaining agreement, effective 1 April 1955, as set forth in Exhibit F attached. On 23 January 1957, the Union issued and thereafter served on the Division the notice appearing as Exhibit A. On 8 February 1957, the Division issued and thereafter served on the Union the notice appearing as Exhibit B. As a result of said notice and counter notice, the Division and the Union bargained collectively from 22 February through 12 April 1957 in an attempt to reach an accord on terms to be embodied with other terms not then in dispute in an agreement to become ef-

fective at such time after 31 March 1957, as might be mutually acceptable.

VIII.

The collective bargaining of the Division and the Union continued throughout the period specified in paragraph VII, during which seven negotiating meetings were held, including three attended by a Conciliator from the Federal Mediation and Conciliation Service. By 31 March 1957, the expiration date of the existing contract, no new agreement had been reached. On 12 April 1957, Council submitted through the Federal Mediation and Conciliation Service its "final proposal", a copy of which is attached as Exhibit G. On that same afternoon a meeting was held, with the Conciliator present, when this proposal was slightly altered by the Council. At a meeting of the Union on that evening, the Union elected to reject the Council's final proposal. Thereupon the Union voted to strike one employer-member of the Council, and its Executive Board made the determination that the Union would strike Buttrey Foods, Inc.. The Union advised its members that in the event of a lockout, all locked out employees should register with the Montana Employment Service to secure other jobs and to be eligible for unemployment compensation. Union members were informed that strikers would not, and others might not, receive unemployment compensation because of the existence of a labor dispute.

IX.

On Saturday morning, 13 April 1957, the Union instituted its strike action by the withdrawing of employees and picketing the three stores of Buttrey Foods, Inc. Prompted by this picketing of this member-employer and to preserve the unity of their position, the remaining member-employers of the Division, acting in concert and pursuant to instructions of their Division, suspended from employment and sent home, thereby locking out, all their employees in the unit represented by the Union. The Union struck no other member-employer of the Council, and admittedly at that time intended to strike no other stores. The Union did not picket any of the stores which had locked out its employees. Buttrey Foods, Inc. subsequently closed one of its three stores for the duration of the strike. All stores where employees were locked out continued to operate on Saturday, 13 April 1957. On Monday, 15 April 1957, Safeway Stores, Inc. closed two of its four stores for the duration of the strike. All other stores continued to operate at all times during the strike. On 15 April 1957, the Division issued and thereafter caused to be delivered to the Union its letter which appears as Exhibit C.

X.

Most of the locked out employees of the member-employers on Monday, 15 April 1957, applied to the Montana Unemployment Compensation Commission for benefits due to their lack of employ-

ment, doing so pursuant to instructions given them by the Union. The Respondents forthwith protested to said Commission against any payment of benefits to the locked out employees. The Montana Unemployment Compensation law provided that unemployed persons meeting the qualifications of that law shall be entitled to $32.00 per week for a period of 22 weeks, and that casual employment not exceeding one day and wages not exceeding $15 per week will not disqualify an employee. Additional provisions of that law respecting eligibility appear as Section 87.106 (d), in Exhibit E. The Respondents, taking note of prior decisions of the Montana Unemployment Compensation Commission, admittedly then sought ways and means of curtailing what they thought to be an unprincipled use of the Montana State Unemployment Compensation Fund. Being advised that a direct protest and a definitive appeal would take from weeks to years and that compensation might nevertheless be paid pending the appeal, they sought means of effectively preventing payment of unemployment compensation to the locked out employees pending an appeal. They concluded that an offer of partial reemployment which would extend longer than one shift and would permit the locked out employees to earn $16 per week would have three consequences, any one of which would disqualify the locked out employees from receiving unemployment benefits:

1. If the Union directed the employees not to return to work, they would become strikers and

would clearly not be entitled to benefits under prior decisions of the Commission.

2. If the employees individually declined offered employment, they would disqualify themselves for benefits under the provision of the law.

3. If they returned to work for $16 per week, they disqualified themselves from benefits under the law.

Under these circumstances on 15 April 1957 the Division issued the notice to the Union, Exhibit C, that it would no longer observe the union contract, and on 18 April 1957 protested payment of unemployment compensation as set forth in the attached Exhibit H. Each member-employer issued written notice of recall to each of his locked out employees on 17 April 1957 in the form attached hereto as Exhibit I, and followed up each notice with telephone calls requesting employees to return to work on 19 April 1957, at a specified hour. This temporary re-employment was under those terms and conditions which had been set forth in Division's letter to the Union, Exhibit C, and eliminated any guarantee of minimum weekly wage or of minimum hours of work in one day. On 19 April 1957 the Respondents ran full-page advertisements in the morning and evening newspapers in Great Falls in the form of the attached Exhibit J. In recalling the locked out employees to work on 19 and 20 April, 1957, and again on two days in the week that followed, Respondents had been advised that such action would prejudice the ability of such employees to secure unemployment compensation for the weeks

of 14-20 April and 21-27 April, 1957, if under the laws of the State of Montana and the Rules, Regulations, and Decisions of the Unemployment Compensation Commission of the State of Montana, such employees were otherwise qualified for compensation. When the employees requested guidance from the Union, they were urged to comply with their employer's wishes. As employees returned to work, they admittedly were advised that their re-employment was to circumvent the unemployment compensation. On 20 April, 1957, after each employee had earned a total of $16 on 19 and 20 April, 1957, each employee was once again released. Those locked out employees who had obtained other jobs and were ineligible for unemployment compensation were given a choice by Respondents of returning to work for the limited period or continuing with their other jobs. Re-employed employees worked a full day Friday, 19 April 1957, but only one or two hours on Saturday, 20 April 1957, at various staggered hours. Apprentices were worked longer hours to earn in excess of $15, and in one case an employee who became sick was credited in conformity with his employer's policy with earned sick leave to entitle him to draw in excess of $15. No employees were permitted to work a full day on Saturday, 20 April 1957. On that date the Union wrote the Division and each of the member-employers a letter, which was delivered that same day, appearing as Exhibit D. The Union also responded to the advertisement of Respondents, Exhibit J, by issuing a handbill in the form of Exhibit N.

XI.

The locked out employees, being those of all member-employers except Buttrey Foods, Inc., listed under the names of their respective employers, were the following:

Safeway #1855—Central Avenue

Fate Brewer, Jr.
Glen Bridgeford
*Richard Konesky
*Leonard Moyer
*Ben Peterson
Helen Pittman
Billy B. Young

Safeway #1856—North

Arlene Bauer
Margaret Clausen
*Robert A. Dull
Jean Hallan
Richard L. Hamers
Lydell Jurasek
Phil A. Keller
Cecelia Krall
June M. Leiby
Jack McConnel
Neil J. McRorie
*Stanley A. Marko
Patrick Lyons
*Aaron Peterson
*David S. Scott
*John Scott
Grace Simonton
*Joseph Super
Lionel Swanson, Jr.
Alice Lorraine Tenney

Safeway #1857—West Side

Rose Marie Andrews
Marion R. Crawford
Herbert F. Hart
Patrick O'Connell
Peder G. Pederson
Joyce Ann Perrigo
*William Puzon
Arthur L. Raunig, Jr.
Dorothy K. Rio
Freeda Rosbarsky
Donna J. Sanders
*Frank Searl
Margaret Tempel
Leah Walbon

Safeway #1865—Southeast

Louise Armstrong
Helen M. Axtman
Verna Brown
*Charles Bundi
Dolores Daniels
Charlotte Golberg
Jack Itami
Frances E. Kelly
Irmen L. D. Knerr
Nettie Korin
Alvin Ladd
Peter K. Meras
*Dan Meyer
Joseph Meyer
Paul Pfeifle

Super Save Market

Verlyn Brown
Joseph Chambers
*Lorrin A. Darby
*Gayle Garrity
*Richard Gasvoda
Charlene Gleason
Everett W. Greenbush
Patsy A. Holmes
*Arlee Javner
Gertrude Kendall
*Barbara Koesler
Doris Madison
Irene I. Major
Thomas S. Marshall
*Jerry Mitchell
Doris Paulson
*Donn Peterson
Georga F. Potts
Robert E. Purcell
Dewain D. Ryan
Darrell D. Schwen
Daryl A. Soltesz
Leonard J. Weaving
*Stuart Wilson

Southgate Super Save Market

Madlee Anderson
Helen M. Burns
Helen P. Gabbert
Lucille Habel
*Tony Kraft
Robert C. Gill
*Ken Roeben, Jr.
Wilford G. Smith
Stanley L. Timms
Helen Wheeler

White House Grocery

Joett E. Aman	Laurence Love
Rose Cadieux	Georgia Vining
Harry Kimmerle	

Noble Mercantile

William Gosney	Alta Kopetski
Al's Food Market	Wally's Superette
Lucille Sowa	Lester Oswald

The persons indicated with the mark of the asterisk (*) above were not "regular" employees, but were "call-in" or "student" employees who had worked on an intermittent basis, whose employment in the work weeks of 14-20 April and 21-27 April was for periods of time less than their respective normal periods of part-time employment.

XII.

The employees listed in paragraph XI above were offered temporary employment on 19 and 20 April 1957, and again on 26 and 27 April 1957, in carrying out the Respondents' plan for part-time employment described in paragraph X above, except for the employees of Al's Food Market and Wally's Superette who were given continuing employment when recalled on 19 April 1957, and except that the employment of the remaining employees on 27 April 1957 became regular by virtue of the fact that the Union and Division reached an agreement

on that date and the employment of all persons on that date was made subject to such agreement.

XIII.

No collective bargaining agreement was in force and effect between the Union and the Division after 31 March 1957. From 1 April to 12 April 1957, all terms and conditions expressed in the agreement which expired on 31 March 1957 were continued in effect by the tacit agreement of the Division and the Union. Following the institution of the strike and the lockout on 13 April 1957, no negotiations between the Union and the Division took place until Wednesday, 24 April 1957, when the Union called the Council and asked to meet again in negotiations. A meeting was held on that afternoon, when the Union presented a proposal, styled "Second Revised Proposal" as set forth in attached Exhibit K. Respondents agreed to accept all items on the first page of this proposal, and various offers and counter offers were made concerning wages and the employment of students as set forth in the second page. At the end of the meeting the Union and the Respondents were one cent (1c) apart on wages payable to full-time employees, and in disagreement over terms with reference to student employees. On 24 April 1957 another meeting was held at which the Union presented two alternative proposals on wages and in reference to student employees as set forth in attached Exhibit L. Respondent accepted the first of these proposals, thereby reaching an agreement with the Union on

all terms to be embodied in the contract to be operative for a two-year period following 1 April 1957. On 26 April 1957 a memorandum of agreement was executed in the form set forth in attached Exhibit M. On 27 April 1957 and thereafter, as above stated, employees of Respondents were employed under the terms and conditions agreed to on the preceding day.

XIV.

On 24 May 1957 the Montana Unemployment Compensation Commission unanimously denied the payment of unemployment compensation to the locked out employees, by adopting as its own findings and conclusions those of its Supervising Claims Examiner, which findings and conclusions appear as Exhibit E. The Union has appealed this decision, which appeal is now pending.

XV.

The General Counsel moves, without objection of any party, to amend the Complaint in this proceedings by deleting from Paragraph XI thereof those names of persons whose names do not appear in Paragraph XI of this stipulation, to-wit: Keith Keller, Clarice Klundt, and Elmer Riley, and by transposing the name of Delores Daniels from the list of Safeway #1856 to the list of Safeway #1865.

Respectfully submitted this 5th day of December, 1957.

Great Falls Employers' Council, Inc., Retail Food Dealers Division, and Its Member Employers, Buttrey Foods, Inc., Safeway Stores, Inc., Paul A. Matteucci, d/b/a Matteucci's Super Save Market, Paul A. Matteucci, d/b/a Southgate Super Save Market, John Eustance, d/b/a White House Grocery, Robert Noble and John H. Noble, d/b/a Noble Mercantile Company, E. R. Fjelstad, d/b/a Al's Food Market, Wallace Anderson, d/b/a/ Wally's Superette,

/s/ By HOWARD C. BURTON,
Counsel for Respondents.

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL No. 57, AFL-CIO,

/s/ By LEO GRAYBILL, JR.,
Counsel for Charging Party.

/s/ MELTON BOYD,
Attorney, Counsel for the General Counsel, National Labor Relations Board.

EXHIBIT "A"

[Handwritten: Rec'd 1/29/57.]

[Insignia Retail Clerks Union]

Great Falls Local No. 57

Headquarters
V.F.W. Building

P. O. Box 1202
Great Falls, Montana

January 23, 1957

Great Falls Employers Council
Retail Food Dealers Division
c/o Mr. Edward C. Burton Counsel
P. O. Box 1403
Great Falls, Montana

Gentlemen:

Retail Clerks International Association, Local Union No. 57, Great Falls, Montana, hereby serves notice upon you, in accordance with the provisions of Section 19 of the current Agreement in force between the parties, of our intention to open for negotiations the sections of the agreement set forth below:

Section 2-A. Union proposes that the phrase "a majority of whose work" be re-phrased, "a substantial part of whose work"; box-out boys to be dropped from the paragraph; the phrase concerning supervisory employees to be dropped from the paragraph.

Section 3. Union proposes to open all of this sec-

Exhibit "A"—(Continued)

tion for such re-definition and clarification as may be necessary.

Section 4-D. Union proposes to clarify and emphasize 4-D by stating that employees will not be paid below the regular scale unless classification determination specified in (illegible) has actually been made by the Union and the Employer.

Section 6-B. Union proposes that the first paragraph of 6-B be eliminated as no longer applicable and that the second paragraph of 6-B be made to read "During the term of this agreement the work week shall * * *"

Section 6-C. The Union proposes this be dropped from the agreement.

Section 7. Union proposes that all the wage paragraphs of Section 7 be opened and that wage scales be raised 30c an hour and that the wage scale for male and female journeymen clerks be equalized.

Section 7-D. All of Section 7-D to be withdrawn from the agreement.

Section 8-A. Sub-paragraph (1) should be dropped as inapplicable and Sub-paragraph (2) should be incorporated in the body of the heading of Section 8-A.

Section 8-B. Union proposes that Sub-paragraph (1) include an hourly rate of $5.00 for time worked after 6:00 P.M., plus $2.00 supper money; that

Exhibit "A"—(Continued)

Sub-paragraph (2) include double time on Sundays and holidays.

Section 9-B. Union proposes that Section 9-B include provision that all Sunday inventories except one be compensated for by an hourly rate of $5.00.

Section 12-A. Union proposes that a provision be included in this section which provides for three weeks vacation after five years employment by one Employer.

Section 19-A. Union proposes that the term of the proposed agreement be one year.

In a few places in the present agreement, dates should be changed to correspond to the new agreement dates but these have not been listed above.

The Union will have its bargaining committee selected by February 1st and would be happy to meet with representatives of the Employers Council at any time after that time. Union urges that early meetings be scheduled since there are many matters to be considered before the present agreement expires.

Respectfully submitted,

RETAIL CLERKS LOCAL
UNION No. 57,

/s/ E. J. RULE,
Corresponding and Financial
Secretary.

EXHIBIT "B"

Great Falls Employers' Council, Inc.

Box 1403 Great Falls, Montana Phone 2-2415

February 8, 1957

Retail Clerks Local Union No. 57
P. O. Box 1202
Great Falls, Montana

Att'n: Mr. E. J. Rule, Corresponding and Financial Secretary

Re: Labor Agreement—Retail Food Dealers Division Retail Clerks Local Union No. 57—1957

Dear Mr. Rule:

Your letter of 23 January 1957 opening the above agreement for re-negotiation was received by this office on 29 January 1957. In response thereto, please note that in negotiations which will ensue the employers will desire to discuss modification of the following provisions:

1. Delete paragraph 7 B) from the agreement.

2. Reduce the reporting pay requirements of paragraph 7 C) to two hours.

3. Revise paragraph 11 A) by the deletion of Armistice Day.

4. Delete paragraph 11 B).

5. Delete paragraph 11 D).

6. Modify paragraph 12 E) by stating that no employee who voluntarily terminates his employ-

Exhibit "B"—(Continued)

ment within nine (9) months or is involuntarily terminated within six (6) months shall be entitled to participation in vacation benefits provided that after he is employed for nine (9) months he shall accrue vacation benefits retro-actively to the date of his employment.

7. Delete the words lay-offs or discharges and laid off or discharged in the first two sentences of paragraph 14 B) and substitute the word termination therefor.

8. Modify paragraph 16 to read as follows: Representatives of the union shall not interfere with the duties of employees. Neither the collection of union dues nor the transaction of union business will be achieved on the employer's premises or the employer's time.

9. Delete the following words from paragraph 18 C): "* * * provided that the status quo as it existed immediately prior to the time the claim or grievance arose shall be maintained."

10. The employers wish to open the effective and terminal dates as set forth in paragraph 19 of the agreement.

Cordially yours,

GREAT FALLS EMPLOYERS' COUNCIL, INC.,

/s/ By HOWARD C. BURTON,
Of Counsel.

HCB:mal

EXHIBIT "C"

[Letterhead Great Falls Employers' Council, Inc.]

15 April 1957

Retail Clerks Local Union No. 57
510 First Avenue North
Great Falls, Montana

Re: Labor Agreement and Relationship, Retail Food Dealers Division, GFEC, Inc.

Gentlemen:

In the course of negotiations had on the above agreement on 12 April 1957, the employers submitted in writing a complete and final proposal to your committee through Mr. Bob McClelland, Commissioner, Federal Mediation and Conciliation Service. This proposal was dated 12 April 1957.

During the late evening of 12 April 1957, the employer representatives of the Retail Food Dealers Division of this Council were advised by Commissioner McClelland that the proposal above referred to had been rejected by the union membership voting 65 to 42 against the same, and that your organization planned to go on strike on the morning of 13 April 1957. Commissioner McClelland did not advise the employer representatives whether it was your intent to strike all or only some of the companies comprising the Retail Food Dealers Division of this Council.

On the morning of 13 April 1957, the members

Exhibit "C"—(Continued)

of your organization employed in the three (3) stores of Buttrey Foods, Inc., one of the eight (8) companies constituting the Retail Food Dealers Division of this Council, did go on strike against and commenced the picketing of those three (3) stores.

To preserve their interest in group bargaining, as guaranteed by law, and as a defensive response to your strike, the remaining employers constituting the Retail Food Dealers Division, that is Al's Food Market, Matteucci's Super Save Market, Noble Mercantile Company, Stores 1855, 1856, 1857, 1865 of Safeway Stores, Inc., Southgate Super Save Market, Wally's Superette and White House Grocery, locked out those of their employees covered by the above contract and which is the subject of this labor dispute.

You are undoubtedly aware, that no contractual arrangement now exists between your union and the Retail Food Dealers Division of this Council, since the contract was opened by appropriate notice and counter-notice, all required federal notices were filed, and the contract, by its own terms expired on 31 March 1957.

In the light of these circumstances, you are advised that the employers hereby withdraw the written offer extended to you on 12 April 1957 and no longer regard themselves as bound by any of the terms and conditions of the expired contract. Further, the employers will no longer honor any of the working terms, conditions or other provisions

Exhibit "C"—(Continued)

set forth in the former contract except the following:

A) The basic hourly rates of pay set forth in paragraph 7 A) 2), without minimum weekly guarantee.

B) The vacation provisions set forth in paragraph 12, sub-paragraphs A), B), C) and E). Vacation leave and pay which has been accrued under the expired contract will continue without interruption, in order that the rights of employees shall not be impaired, and until a new agreement is reached, eight (8) hours work shall count as one (1) day's work for the purposes of continued accrual.

Cordially yours,

GREAT FALLS EMPLOYERS' COUNCIL, INC.,

/s/ By HOWARD C. BURTON,
Of Counsel.

HCB:mal

EXHIBIT "D"

[Stamped: Received April 22, 1957.]

April 20, 1957

Super-Save Grocery and South Gate Grocery
Safeway Stores
White House Grocery
Noble Mercantile Company
Wally's Superette
Al's Grocery

Gentlemen:

Last week after Retail Clerks Local No. 57 struck Buttery Grocery Stores, other members of the Retail Food Dealers Division of the Great Falls Employers Council, including yourself, locked out Local 57 employees. In doing so, you apparently relied on your counsel's advice concerning the recent case of National Labor Relations Board vs. Buffalo Linen Supply Co. Local No. 57 has no quarrel with the position taken by the Supreme Court in that case. However, on Friday and Saturday, April 19th and 20th, you hired back your locked-out clerks.

This letter should be considered notice to you that the Union would consider any further lockout to be an unfair labor practice within the scope and spirit of Section 8a of the Taft-Hartley Act.

The Supreme Court's holding in the Buffalo Linen Supply case was limited to the proposition that a multi-employer bargaining unit could protect itself from a whipsaw strike by locking out em-

Exhibit "D"—(Continued)

ployees after the Union representing them had struck one member of the group. The Supreme Court makes it clear that this does not sanction lockouts generally, and that lockouts to destroy or undermine bargaining representation, to evade the duty to bargain, and especially layoffs based on reprisal, are not sanctioned.

It is clear that you do not consider your multi-bargaining unit endangered because of hiring back your employees before the issues between the bargaining unit and the Union were resolved. Further lockouts will be considered in the nature of reprisals by the Union and the Union will have to take the necessary legal steps to protect its members under the terms of the Taft-Hartley Act if further lockouts occur.

It is the sincere wish of Local No. 57 that further disruption of grocery distribution in the Great Falls area can be avoided and that negotiations culminating in a satisfactory settlement for all parties can be speedily concluded.

Very truly yours,

RETAIL CLERKS UNION
LOCAL No. 57,

/s/ By LEO GRAYBILL, JR.,
Of Counsel.

cc-Great Falls Employers' Council.

EXHIBIT "E"

Chapter 140, Montana Session Laws of 1957:

"Section 87-103, Benefits

(b) Weekly benefit amount—

Such benefit shall be not more than thirty-two dollars ($32.00) per week nor less than ten dollars ($10.00) per week."

"Section 87-104, Duration of Benefits

The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed twenty-two (22) times his weekly benefit amount."

"Section 87-106, Disqualification for Benefits

* * * * *

(d) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches

Exhibit "E"—(Continued)

of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits."

"Section 87-107, Claims for Benefits

* * * * *

(b) Initial determination. A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claims valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which small make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of Section 87-106 (d), the deputy shall

Exhibit "E"--(Continued)

promptly transmit his full finding of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period under dispute prior to the final decision of the commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid."

Exhibit "E"—(Continued)

"Section 87-149, Definitions

(a) Total unemployment:

(1) An individual shall be deemed 'totally unemployed' in any week during which he performed no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(3) As used in this subsection the term 'wages' shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of fifteen dollars ($15.00) in any one week, and the term 'services' shall not include that part of odds jobs or subsidiary work, or both, for which remuneration equal to or less than fifteen dollars ($15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, and any overtime worked immediately following such eight (8) hours, whichever is greater."

"Section 87-102, Declaration of State Public Policy

As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject to general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often

Exhibit "E"—(Continued)

falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

May 14, 1957

To: Chadwick H. Smith, Chairman
Unemployment Compensation Commission
Examiner

From: Charles Peterson, Supervising Claim
Examiner

Subject: Labor Dispute: Retail Clerks International Association, Local Union No. 57 vs. Buttrey Food Stores (No. 23, 26, and 28) of Great Falls, Montana, a member of the Great Falls Employers' Council, Inc.

The Great Falls Employment Security Office informed this office on April 18, 1957 that a labor dis-

Exhibit "E"—(Continued)

pute was in existence between the Retail Clerks International Association, Local Union No. 57 and Buttrey Food Stores No. 23, 26, and 28 of Great Falls. This labor dispute was settled April 26, 1957.

Members of Retail Clerks Local Union No. 57 and Meat Cutters and Butchers, Local Union No. 479 have filed claims for unemployment benefits as a result of the labor controversy. I am, therefore, in accordance with the provisions of Section 87-107 (b) of the Montana Unemployment Compensation Law transmitting to the Commission herewith all claims concerned.

To date, sixty-five (65) claims have been filed by members of Retail Clerks and Meat Cutters Local Unions. These claimants' names are listed by employer, union membership, date and type of claim on pages 2, 3 and 4 of this transmittal. The status of claims filed indicates that eight continued could be compensable.

(N.B. Pages 2, 3 and 4 of the exhibited report have been omitted, the names of the claimants not being pertinent.)

Findings:

The Great Falls Employers' Council, Inc. contended that a labor dispute existed between the Council and the Retail Clerks Local No. 57, Retail Food Dealers Division. The Employer Council represents the following food stores:

Buttrey Foods, Inc.
Matteucci Super Save
Safeway Stores

Exhibit "E"—(Continued)
Wally's Superette
Al's Food Market
Noble Mercantile Co.
Southgate Super Save Market
Whitehouse Grocery

The Retail Clerks Local No. 57 contends that a labor dispute exists only with Buttrey Food Stores #23, 26 and 28 and that members of Local No. 57 are locked out by Matteucci, Super Save, Safeway Stores, Wally's Superette, Noble Mercantile Co., Southgate Super Save Market, and Whitehouse Grocery.

Available information indicates that a labor dispute was in existence between Local No. 57 and the Buttrey Stores beginning on or about April 13, 1957 and ending April 26, 1957.

On April 18, 1957 the Great Falls Employers' Council, Inc. wrote to the manager of the Great Falls Employment Service office, enclosing rosters of employees of the food stores listed in paragraph one.

Roster #1. All employees of Buttrey Foods, Inc. The employees are listed in two categories:

(1) Retail Clerks who are on strike.

(2) Butchers and other meat employees for whom work is available, but who refuse to cross the picket lines of Local No. 57.

Roster #2. Retail Clerks employed by the food stores listed in paragraph two.

Roster #2 carries the remark that the employees were "locked out."

Exhibit "E"—(Continued)

The Council, on behalf of all employers involved, protests the payment to the claimants listed on Rosters #1 and 2 of any unemployment compensation on two (2) grounds:

1. The employees have declined to accept work offered to them and there is no evidence that they are not physically or mentally qualified to accept and perform the same.

2. Each of such employee is involved in a work stoppage which exists because of a labor dispute at the establishment where he is employed.

Article 19 A of the expired union contract provides:

"The provisions of this agreement shall become effective on 1 April 1955 and shall remain in full force and effect through 31 March 1957 and yearly thereafter from 1 April through 31 March unless one of the parties hereto shall serve notice in writing upon the other party hereto not less than sixty (60) days prior to its expiration date or any anniversary thereafter. If such notice is served by either party hereto, this agreement shall terminate upon its expiration date."

Available information indicates that Local No. 57 served notice to the Council by registered mail on January 29, 1957. Since the contract had expired, a labor dispute at Buttreys Foods, Inc. would not necessarily involve the Retail Clerks employed at other Great Falls Food Stores.

The food stores listed in paragraph two sent their employees specific notices to report on Friday,

Exhibit "E"—(Continued)

April 19, 1957. Available information indicates that these employees reported for work and were sent home again by their employers on Saturday, April 20, 1957.

Leo Graybill, Counsel for the Retail Clerks Union Local No. 57, furnished Mr. Menager, manager of the Great Falls Employment Service office, the following statement regarding lockout of grocery clerks in Great Falls between April 13 and April 25, 1957:

"On Saturday, April 13, 1957, Safeway Stores, Inc., Matteucci's Super Save Market, Southgate Super Save Market, White House Grocery, Noble Mercantile Company, Al's Grocery and Wally's Superette, locked out their grocery clerk employees. At that time the Retail Clerks Union had struck three Buttrey Food Stores in Great Falls. The Union made no attempt to extend the picketing or to strike stores other than Buttrey's. It had not planned and never did plan to strike any of them.

"All eligible employees were notified by the Union to report to the Montana State Employment Office and register as required by law.

"On Thursday, April 18, 1957, employees at the above mentioned stores were called by their employers and told to return to work on Friday morning, April 19th. When employees requested guidance from the Union, they were urged to comply with their employer's wishes. On Friday, April 19th, all employees still available (some had left town temporarily or were otherwise employed) went

Exhibit "E"—(Continued)

to work for their respective employers listed above. These employees worked all day Friday and were told to report for work Saturday, April 20th, at various hours. They did so. During Saturday, April 20th, but at different staggered hours, they were all laid off. Most employees worked only 1 hour Saturday, although some worked longer. None were allowed to work Monday, April 22nd, although many reported for work.

"All of the employees recalled were allowed and required to earn $15.00 or more. Apprentices were worked longer to qualify for $15.00 or more. In one case, the employee, Lionel Swenson, became sick and he was "given" some time so he would draw at least $15.00. None of the employees were allowed to work a full day Saturday, April 20th, and all were laid off without a full second day. Many were laid off with only 1 hour in on Saturday, April 20th, although the Agreement still in force between the Stores and the Union provides for four hours reporting per pay day.

"Each manager and/or owner at their respective stores indicated to their employees on Saturday, April 20th, that the purpose of bringing them back to work was to let them earn enough to defeat claims for unemployment compensation."

The Employer Council contends that work is available at the Buttrey Foods, Inc. for butchers and other meat department employees, but they will not cross the picket lines. The Manager of the Great Falls local office requested a statement from

Exhibit "E"—(Continued)

the Meat Cutters and Butchers, Local No. 479, but to date none has been furnished. Claimant Minya Lamb, member of Local 479 and employee of Buttrey Foods Inc. reported she could not report for work at Buttreys Foods because her union Local 479 had voted not to cross the picket line of the Retail Clerks.

Claimant Mary Hinrichsen filed an initial claim for benefits on April 25, 1957, effective date April 21, 1957, showing her last employment from April 16, 1957 to April 20, 1957 with the Rexall Lunch counter, Great Falls, Montana. The reason for separation was "Temporary job." The claim further indicates that she was employed by Buttrey Foods, Inc. from August 30, 1953 to April 12, 1957 and that she is a member of Retail Clerks Union Local No. 57. Available information does not indicate that claimant's employment with the Rexall lunch counter was bona fide employment in accordance with Official Interpretation No. 74, dated April 17, 1953.

Available information does not indicate that the parties concerned have used other than peaceful methods for negotiating.

Available information does not indicate that there was failure or refusal of the employer to conform to the provisions of any Law of the State of Montana or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work.

Attached hereto is file labeled "Retail Clerks In-

Exhibit "E"—(Continued)

ternational Association Local Union No. 57, vs. Buttrey Food Stores No. 23, 26, and 28 of Great Falls, Montana."

Conclusion:

Section 87-106 (d) of the Montana Unemployment Compensation Law provides as follows:

"87-106. Disqualification for benefits.

An individual shall be disqualified for benefits—

* * * * *

(d) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

"(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

"Provided, that if in any case separate branches of work which are commonly conducted as sepa-

Exhibit "E"—(Continued)

rate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits."

There can be no question that there was a labor dispute at the following-named establishments:

Matteucci
Super Save
Safeway Stores
Wally's Superette
Noble Mercantile Co.
Southgate Super Save Market
Whitehouse Grocery

Representatives for both the claimants who are members of said Retail Clerks Local No. 57, and the above-named employers, admit that there was a lockout at each of these establishments. A lockout is a form of labor dispute. The total unemployment of the claimants, members of Retail Clerks Local No. 57, last employed at the above-named seven estab-

Exhibit "E"—(Continued)

lishments, was due to a stoppage of work which existed because of the lockout; that each of said claimants was directly interested in said labor dispute which caused the stoppage of work; and, each belongs to the grade and class of workers, of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurred, all of whom were directly interested in the dispute. The Union employed a tactic known generally as "whipsawing" by striking and picketing the premises of one of the members of the Great Falls Employers' Council, Inc., for the purpose of compelling the Council to execute a new contract with the Retail Clerks Local No. 57. The lockout by the employer did not constitute a failure or refusal to conform to the provisions of any law of this state or of the United States pertaining to collective bargaining, hours, wages or other conditions of work. (See NLRB v. Truck Drivers Local No. 449, et al., Supreme Court of the United States, April 1, 1957.)

The Deputy concludes that the claimants mentioned in the above paragraph are disqualified to receive benefits accordingly under Section 87-106 (d) beginning April 14, 1957 through April 25, 1957.

The Deputy concludes that the total unemployment of claimant Mary Hinrichsen, member of Retail Clerks Local No. 57 and employee of Buttreys at the time she filed her claim for benefits was due to a stoppage of work which existed because of a

Exhibit "E"—(Continued)

labor dispute at the establishment or premises at which she was last employed, and at which time she did belong to the grade and class of workers which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurred, at least some of whom were participating in, or financing, or directly interested in the dispute.

Claimant Mary Hinrichsen is disqualified to receive benefits accordingly under Section 87-106 (d) beginning April 21, 1957 through April 25, 1957.

The Deputy concludes that the total unemployment of the claimants heretofore listed as Meat Cutters and Butchers at the time they filed their claims for benefits was due to a stoppage or work which existed because of a labor dispute at the establishment or premises at which they were last employed, and further, from April 13, 1957 to April 26, 1957, they were participating in the labor dispute by reason of their refusal to cross the picket line established by the Retail Clerks Local Union No. 57.

The aforementioned claimants, members of the Meat Cutters and Butchers Union, are disqualified to receive benefits accordingly under Section 87-106 (d) beginning April 14, 1957 through April 25, 1957.

/s/ CHARLES PETERSON,
Charles Peterson,
Supervising Claims Examiner.

CP:pb

EXHIBIT "H"

[Letterhead of Great Falls Employers' Council, Inc.]

18 April 1957

Montana State Employment Service
1201 Central Avenue
Great Falls, Montana
Att'n: Mr. P. J. Menager

Re: Labor Dispute, Retail Clerks Local No. 57, Retail Food Dealers Division, Great Falls Employers' Council, Inc.

Dear Mr. Menager:

Pursuant to your telephone request, you will find enclosed herewith rosters of all employees involved in the above described labor dispute.

One roster covers all employees of the three (3) stores of Buttrey Foods, Inc. The employees here involved fall into two categories: 1) Retail Clerks who are on strike 2) Butchers and other meat department employees for whom work is available in the local stores of Buttrey Foods, Inc., but who refuse to cross the picket lines of the Clerks and accept such work.

The second roster covers all Retail Clerks employed by Al's Food Market, Matteucci's Super Save Market, Noble Mercantile Co., Safeway Stores, Inc. in its four (4) local stores, Southgate Super Save Market, Wally's Superette and the White House Grocery. These employees were tem-

Exhibit "H"—(Continued)

porarily locked out on Saturday, 13 April 1957, at times varying between 9:00 a.m. and 1:00 p.m.

For your use and information in connection with the second roster, you will also find enclosed, duplicate originals of notices of recall requesting each employee temporarily locked out and who would normally work on Friday, to return to work on Friday, 19 April 1957 at 9:00 a.m. Those employees who would normally work on Saturday only, will be requested by telephone, to return for work on Saturday, 20 April 1957. The originals of the enclosed notices of recall were mailed at 5:00 p.m. on Wednesday, 17 April 1957.

You will note that roster #2 designates each employee with respect to whom we have received a notice of claim for unemployment compensation.

Finally enclosed are copies of each notice of claim for compensation which we have received and a copy of the expired union contract which you may find informative.

On behalf of all employers here involved, we protest the payment of any unemployment compensation on two (2) grounds:

1. The employees have declined to accept work offered to them and there is no evidence that they are not physically or mentally qualified to accept and perform the same.

2. Each of such employees is involved in a work stoppage which exists because of a labor dispute at the establishment where he is employed.

Exhibit "H"—(Continued)

If we may assist you further, please so advise us.

Cordially yours,

GREAT FALLS EMPLOYERS'
COUNCIL, INC.,

/s/ By HOWARD C. BURTON,
Of counsel.

HCB:mal
Encls.

About This Trouble in the Grocery Stores

At the Request of Retail Clerk's Local Union No. 57

AL'S FOOD MARKET
BUTTREY FOODS, INC.
MATTEUCCI'S SUPER SAVE MARKET
NOBLE MERCANTILE CO.
SAFEWAY STORES, INC.
SOUTHGATE SUPER SAVE MARKET
WALLY'S SUPERETTE
WHITE HOUSE GROCERY

have, since 1950, jointly negotiated and signed ONE common contract. These establishments are, within the meaning of the National Labor Relations Act, "an appropriate, multi-employer bargaining unit." For the purposes of their labor relations, these associated businesses are treated as one.

From February 22 through April 12, these firms bargained with Retail Clerks Local No. 57 in an effort to reach a new agreement, and on the latter date, made the following offer for a two-year contract:

	1957-1958		1958-1959	
	Increase	Hourly Rate	Increase	Hourly Rate
Women	16½c	$1.63	10c	$1.73
Men	14c	$1.97	10c	$2.07

STRIKE!

Not satisfied with this offer, on April 13, 1957, the clerks struck the employers' bargaining unit, BUT THEY PICKETED ONLY ONE FIRM—BUTTREYS. As a defensive measure, all the other stores locked their clerks out.

LOCKOUT!

THE SUPREME COURT OF THE UNITED STATES made lockouts as legal as strikes in a decision handed down on Monday, April 1, 1957. The Supreme Court has this to say:

"...the strike against the one employer necessarily carried with it an implicit threat of future strike action against any or all of the other members of the Association 'with the calculated purpose' of causing 'successive and individual employer capitulations'."

"Although the Act (The National Labor Relations Act) protects the right of the employees to strike, in support of their demands, this protection is not so absolute as to deny self-help by employers when legitimate interests of employers and employees collide. Conflict may arise, for example, between the right to strike and the interest of small employers in preserving multi-employer bargaining as a means of bargaining on an equal basis with a large union. . ."

DID THE CLERKS FORCE A LOCKOUT?

IN PICKETING ONLY ONE FIRM OF ALL THOSE IN THE EMPLOYERS' BARGAINING UNIT, DID THE CLERKS IN EFFECT NOT FORCE A LOCKOUT?

STRIKE FUND?

SHOULD THE STATE UNEMPLOYMENT COMPENSATION FUND BE A STRIKE FUND?

The State will not pay strikers. Under the law we contend it should not pay employees locked out in these circumstances, for the Unemployment Compensation Law states that compensation "may not be paid to employees interested in or who stand to benefit from a labor dispute."

It is our contention that as conducted the strike attempts to take unfair and illegal advantage of unemployment compensation funds to which as taxpayers we all contribute.

If Buttrey Foods, Inc., Is Unfair, We're All Unfair

AL'S FOOD MARKET
BUTTREY FOODS, INC.
WHITE HOUSE GROCERY
MATTEUCCI'S SUPER SAVE MARKET
SOUTHGATE SUPER SAVE MARKET
NOBLE MERCANTILE CO.
SAFEWAY STORES, INC.
WALLY'S SUPERETTE

United States of America
Before the National Labor Relations Board

Case No. 19-CA-1459

GREAT FALLS EMPLOYERS' COUNCIL, INC., RETAIL FOOD DEALERS DIVISION, AND ITS MEMBER EMPLOYERS, BUTTREY FOODS, INC., SAFEWAY STORES, INC., PAUL A. MATTEUCCI, d/b/a MATTEUCCI'S SUPER SAVE MARKET, PAUL A. MATTEUCCI, d/b/a SOUTHGATE SUPER SAVE MARKET, JOHN EUSTANCE, d/b/a WHITE HOUSE GROCERY, ROBERT NOBLE and JOHN H. NOBLE, d/b/a NOBLE MERCANTILE COMPANY, E. R. FJELSTAD, d/b/a AL'S FOOD MARKET, WALLACE ANDERSON, d/b/a WALLY'S SUPERETTE,

and

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL No. 57, AFL-CIO.

DECISION AND ORDER

I. Statement Of The Case

Upon charges and amended charges timely filed by Retail Clerks International Association, Local No. 57, AFL-CIO (herein called the Union) a complaint was issued herein on October 11, 1957, by the General Counsel of the National Labor Rela-

tions Board, acting through the Regional Director for the Nineteenth Region, alleging that Respondents had engaged in unfair labor practices within the meaning of Sections 8 (a) (1) (3), and (5) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, et seq.), herein called the Act. Upon due service of the charges and amended charges, complaint, and notice of hearing thereon, Respondents filed an answer which admitted many of the allegations in the complaint but denied the commission of any of the unfair labor practices charges. Thereafter, on December 5, 1957, the parties agreed to submit the case to the Board for decision on a complete stipulation of facts which expressly waived hearing before a Trial Examiner and a Trial Examiner's recommended findings of facts, conclusions of law, and order. The Board having authorized such submission of the case and having received and considered briefs filed by the General Counsel, Respondents and Charging Party, hereby finds the facts to be as stipulated. These facts may be summarized as follows:

Respondent Great Falls Employers' Council, Inc., Retail Food Dealers Division (herein called Council), is an employer association and the collective bargaining agent for the 8 members of a multi-employer unit consisting of Respondents Buttrey Foods, Inc.; Safeway Stores, Inc.; Matteucci's Super Save Market; Southgate Super Save Market; White House Grocery; Noble Mercantile Company; Al's Food Market; and Wally's Superette. Respond-

ents admit that they are engaged in commerce within the meaning of Sections 2 (6) and (7) of the Act and the Board, therefore, has jurisdiction of this proceeding. The Union further admits it is a labor organization within the meaning of Section 2 (5) of the Act and, since 1954, the record shows it has been recognized as the exclusive bargaining representative for a unit of Respondents' employees described as follows:

> All sales clerks, checkers, grocer or produce clerks, receiving or shipping clerks, stock clerks, order clerks, light parcel delivery men, jumpers, boxout boys, sackers and wrappers of employers of the Retail Food Dealers Division of the Great Falls Employers' Council, excluding supervisory employees as defined in the Act.

On April 22, 1955, the Council and the Union executed a collective bargaining agreement which became effective as of April 1, 1955. Written notice to reopen the contract for negotiations was served by the Union on the Council on January 23, 1957, pursuant to a 60-day automatic renewal clause in the agreement. The Council served a counter notice dated February 8, 1957, on the Union, and on the issues thus framed by notice and counter notice the parties began to bargain on February 22, 1957. During the period February 22, to April 12, 1957, the parties met in seven bargaining sessions, including 3 meetings attended by a conciliator from the Federal Mediation and Conciliation Service. Meanwhile, on March 31, 1957, the contract expired by

its terms,[1] but was continued in effect by mutual agreement of the parties thereto.

On April 12, 1957, the Council submitted, through the conciliator, a "final proposal" which, as slightly amended, was rejected by the Union which, later that evening, voted to strike one employer member, Respondent Buttrey. The Union instructed its employee members that in case of a lockout by the non-struck employer members of the unit, all locked-out employees should register with the Montana Employment Service for other jobs and/or to qualify for unemployment compensation. The Union advised its members that strikers would be, and that those locked out might be, disqualified from receiving benefits because of the existence of a labor dispute.

On the morning of Saturday, April 13, 1957, the Union struck Buttrey by withdrawing its employees and picketing Buttrey's 3 stores. The other Respondents, "prompted by this picketing of this member-employer and to preserve the unity of their position" responded by sending home, thus locking out, all their employees represented by the Union.

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[1] Paragraph 19 of the contract provided: A) The provisions of this agreement shall become effective on 1 April 1955 and shall remain in full force and effect through 31 March 1957 and yearly thereafter from 1 April through 31 March unless one of the parties hereto shall serve notice in writing upon the other hereto not less than sixty (60) days prior to expiration date or any anniversary thereafter. If such notice is served by either party hereto, this agreement shall terminate upon its expiration date.

Subsequently Buttrey closed 1 of its 3 stores, and Safeway closed 2 of its 4 stores for the duration of the strike; all other employer-members kept their stores open and operating throughout the strike.

It is stipulated, and the Montana Unemployment Compensation Law provides, that a qualified claimant is entitled to payments of $32 per week for a period of 22 weeks; however, the claimant will be disqualified for any week in which he has received employment exceeding one eight-hour day and wages exceeding $15.[2] Moreover, the Montana statute denies benefits to a claimant whose unemployment is due to a work stoppage caused by a "labor dispute" at the factory, establishment, or other premises at which he was last employed if the claimant is, or belongs to a class of workers any of whom is, participating, financing, or directly interested in the labor dispute, provided: "if the Commission, upon investigation shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state * * * or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits." [3]

When, on Monday, April 15, 1957, most of the locked-out employees, as urged by the Union, applied to the Montana Unemployment Compensation

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[2] 6 Revised Codes of Montana (1957 Cum. Supp.), § 87-149 (a) (1) (2) and (3).

[3] 6 Revised Codes of Montana (1957 Cum. Supp.), § 87-106 (d).

Commission, Respondents forthwith protested to the Commission against any payment of benefits to such employees on the grounds that their unemployment was due to a labor dispute. Respondents, "taking notice of prior decisions" of the Commission and "being advised that a direct protest and definitive appeal would take from weeks to years and that compensation might nevertheless be paid pending the appeal," then admittedly sought effectively to frustrate what they claimed to be "an unprincipled use" of the unemployment fund as a strike fund. Accordingly, Respondents agreed upon the strategy of having each nonstruck employer offer, during each week of the labor dispute, partial reemployment which would last more than one eight-hour shift and would allow each locked-out employee to earn $16, the minimum weekly amount of work and earnings required by the statute to disqualify a claimant. In so doing Respondents would present the Union and its members with a three-horned dilemma which would have the desired effect no matter which horn was grasped: (1) if the employees accepted, they would be perforce ineligible for unemployment benefits; (2) if they refused individually, they would be similarly disqualified by refusing offered work; (3) if they refused at the request of the Union, they would be strikers and therefore ineligible. At the same time, the Council, by letter dated April 15, 1957, notified the Union that the Council was withdrawing the last offer, which the Union had rejected, and would no longer honor the terms of the old, expired contract except

for such specified exceptions as basic hourly rates of pay without minimum weekly guarantees.

Thereafter, on April 17, 1957, each employer-member, by written notice and telephone, requested its employees to report to work at specified hours on April 19, 1957. When the employees asked the Union for advice, the Union urged them to accept; and when those who accepted [4] returned to work, their employers candidly told them that the purpose of the reemployment was to circumvent unemployment compensation benefits. On April 20, at various staggered hours, as soon as each recalled employee had earned a total of $16, he was again released by his employer, except for 2 employer-members, Respondent Al's Food Market and Wally's Superette, which gave their recalled employees full-time work on April 19. On April 20, 1957, the Union delivered to the Council a letter which voiced no objection to the recall on April 19, but stated that it would regard "any further lockout to be an unfair labor practice" under the Act.

During the following week of April 21-27, the Council, as it had before, offered the employees the same amount of work on April 26 and April 27 on the same terms and for the same purpose. There was no further lockout on April 27, however, because on this date the parties concluded a new two-year contract under which the April 26 reemployment became regular.

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[4] Those locked-out employees who had other interim jobs were given the option of returning to Respondents for the limited employment or remaining on their new jobs.

II. The Issues

The complaint alleges that Respondents violated Section 8 (a) (3) and (1) of the Act by locking out the non-striking employees in response to the Union's strike against Buttrey and by the temporary reemployment of these lock-out employees, thus making the lockout intermittent, in order to frustrate any rights they may have had to receive unemployment insurance. The complaint also alleges that Respondents' institution of the partial employment constituted unilateral employer action which violated Section 8 (a) (5) of the Act. Respondents contend, on the other hand, that their lockout action was defensive and therefore lawful under the Board's decision in Buffalo Linen Supply Company;[5] and that there was no refusal to bargain vis-a-vis the partial employment because the Union acquiesced therein.

III. The Unfair Labor Practices

An employer's right to close down his plant, or to lay off his employees or otherwise to alter his employees' tenure and working conditions, is circumscribed by the Act only insofar as its exercise does not impinge upon the employees' rights to organize and to engage in other concerted activity protected by the Act.[6] Thus, it is well-settled that an employer is free to suspend operations for business reasons

[5] 109 NLRB 447, affirmed 353 U. S. 87.

[6] N. L. R. B. v. Jones & Laughlin, 301 U. S. 1, 45-46.

which are not concerned with protected employees activity.[7] On the other hand, it is equally settled law that a lockout or layoff prompted, not by business considerations, but by a purpose to defeat organization or other protected activity, is prima facie a violation of Section 8 (a) (3) and (1) of the Act.[8] However, the right of the employees to engage in collective bargaining and to strike in support of their demands is not absolute [9] and must be balanced against the employer's right to protect his business against unusual economic loss.[10] And, as the Supreme Court has stated, "Accommodation between

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[7] See N. L. R. B. v. Houston Chronicle Publishing Co., 211 F. 2d 848 (C.A. 5); N. L. R. B. v. Goodyear Footwear Co., 186 F. 2d 913, 918 (C.A. 7); Atlas Underwear Co. v. N. L. R. B., 116 F. 2d 1020, 1023 (C.A. 3).

[8] See Radio Officers' Union v. N. L .R. B., 347 U. S. 17, 44-46; N.L.R.B. v. Wallick & Schwalm Co., 198 F. 2d 477 (C.A. 3); N. L. R. B. v. Somerset Classics, 193 F. 2d 613 (C.A. 2), certiorari denied, 344 U. S. 816.

[9] See Automobile Workers v. W. E. R. B., 336 U. S. 245, in which the Supreme Court observed that (p. 259): "Neither the common law nor the Fourteenth Amendment confers the absolute right to strike * * * [which] because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' * * * recognized as such in its decisions long before it was given protection by the National Labor Relations Act."

[10] N. L. R. B. v. Babcock & Wilcox Co., 351 U. S. 105, 112; Republic Aviation Corp. v. N. L. R. B., 324 U. S. 793, 797-798.

the two must be obtained with as little destruction of one as is consistent with the maintenance of the other." [11]

Accordingly, the Board has held that a single employer may counter threatened strikes by lockouts under circumstances giving special weight to the employer's competing interest.[12] Similarly, the Board has also held that members of a multi-employer unit can resort to a temporary lockout to preserve the unit from the union's tactic of striking only one member of the unit.[13] Absent such special circumstances, however, an employer, by locking out his employees, presumptively infringes upon the collective bargaining rights of these employees in violation of Section 8 (a) (1) and the resulting layoff not only constitutes unlawful discrimination under Section 8 (a) (3) but also subjects the union

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[11] Idem.

[12] See, e.g., Duluth Bottling Association, 48 NLRB 1335, 1359-1360 (where spoilage of employer's material would result otherwise); International Shoe Co., 93 NLRB 907 (where production planning made difficult by prospective recurrent work stoppages); Betts Cadillac Olds, Inc., 96 NLRB 268 (where, because union refused to promise sufficient advance notice of strike, new repair work could not be finished and returned to customers); Cf., Quaker State Oil Refining Corporation, 121 NLRB No. 49 (where Board found employer had no reasonable grounds for believing union would call sudden strike which would threaten potentially dangerous plant units). See also, American Brakeshoe Company, 116 NLRB 820, set aside, 244 F. 2d 489, (C.A. 7).

[13] Buffalo Linen Supply Company, 109 NLRB 447, affirmed 353 U. S. 87.

and the employees it represents to unwarranted and illegal pressure which creates an atmosphere not conducive to the free opportunity for negotiation contemplated by Section 8 (a) (5).[14] Where such special circumstances are raised as a defense, the burden of going forward with the evidence of justification is upon the employer.[15]

1. The original lockout

Applying the foregoing principles to the facts in this case, we agree with Respondents' contention that their original lockout on April 13, 1957, was privileged under our decision in the Buffalo Linen case, supra. The parties agree that Respondents' purpose in locking out their non-striking employees was only to protect the multi-employer unit from the disintegration threatened by the Union's tactic of calling a "whipsaw" strike against one employer member in support of demands against all. Such a strike threat "per se, constitutes the type of economic operative problem at the plants of the non-struck employers which legally justifies their resort to a temporary lockout of employees."[16] Respondents' action in this regard was therefore "defensive

[14] Quaker State Oil Refining Corporation, 121 NLRB No. 49; Cf. Insurance Agents International Union (Prudential Insurance Company), 119 NLRB No. 103.

[15] Quaker State Oil Refining Corporation, supra.

[16] N. L. R. B. v. Truck Drivers Union (Buffalo Linen Supply Company), 353 U. S. 87, 97.

and privileged in nature, rather than retaliatory and unlawful." [17]

2. The partial lockout

However, we cannot agree with the assertion that the non-struck employers were likewise privileged, under the principle announced in the Buffalo Linen case, supra, to rehire their locked-out employees on April 19, 1957, and again to lay them off on the next day as soon as each had earned $16. In so doing these Respondents were not seeking to protect their legitimate interest in bargaining on a group basis; indeed, by voluntarily breaking their own lawful lockout they demonstrated that they did not believe the multi-employer unit was then in any danger from the Union's strike action. This conduct was not defensive in nature, but instead, was patently in retaliation against the concerted, union-directed efforts of these employees to procure unemployment insurance benefits pending settlement of the labor dispute.[18] In short, having demanded and received the right to lockout to protect the unit,

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[17] Idem.

[18] The record as a whole does not support an inference that the Union and its members were thus engaged in an unprotected "unlawful conspiracy" to finance the strike out of state funds. These claimants had an undoubted right to apply for benefits even though the State Unemployment Compensation Commission might reject their applications as unmeritorious, as the Commission did in fact. Legal conduct is not made illegal, and thus unprotected, because it is concerted. Automobile Workers v. W. E. R. B., 336 U. S. 245, 258.

Respondents now demand the right to engage in a partial lockout upon a profession of their desire to protect the unemployment reserves of the State of Montana from a real or fancied misuse as a strike fund. On the record here, we find no warrant in law, equity, or reason for such an extension of the holding in the Buffalo Linen case.

Respondents' contention that there are special circumstances which justify their action turns upon certain provisions of the law of Montana. The Montana unemployment compensation statute,[19] in addition to denying benefits to a claimant for any week in which he has received employment exceeding one eight-hour day and wages exceeding $15, also, in another section thereof,[20] denies benefits if the claimant's "unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, at other premises at which he is or was last employed;" provided, the Montana Unemployment Compensation Commission finds that the claimant is participating in or financing or directly interested in the labor dispute causing the work stoppage, or is a member of a grade or class of workers so involved in the dispute; provided further, that the Commission finds the labor dispute is not caused by an employer unfair labor practice under either state or federal law.[21] The statute is

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[19] 6 Revised Codes of Montana (1957 Cum. Supp.) § 87-149 (a).

[20] 6 Revised Codes of Montana (1957 Cum. Supp.) § 87-106 (d).

[21] Idem.

silent as to whether or not a "lockout" comes within the term "labor dispute." However, Respondents assert in their brief that the Commission had held in a prior uncited case, that employees locked out under the circumstances of this case were not unemployed because of a "labor dispute," a result Respondents considered contrary to the state public policy underlying enactment of the Statute.[22] Therefore, Respondents contend that unless they took direct action to disqualify these employees under one section of the law, they believed the Commission would reject their direct protest,[23] misconstrue the "labor dispute" section and order payment before this order could be litigated to a conclusion in the state courts, the net result of which would be to increase these employers' tax contributions to the unemployment reserves under the state's experience rating formula, thus compelling them to subsidize the Union's strike against themselves. But assuming, arguendo, that such are the consequences, we

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[22] See 6 Revised Codes of Montana (1947), § 87-108: "The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

[23] In fact, however, the record shows that the Commission sustained Respondents' protest, concluding that the "lockout" in question was a "labor dispute" within the meaning of the statute and was not an unfair labor practice under state or federal law on the basis of the Supreme Court's decision in the Buffalo Linen case, supra.

do not think they constitute those special circumstances which the Board has held, in other cases, entitle an employer to lockout in order to protect his business from unusual economic loss.[24]

Moreover, if we were to conclude that Respondents' lockout technique is justified because, as our dissenting colleagues argue, the resulting disqualification of locked-out employees complements local public policy forbidding payment of unemployment insurance benefits to such claimants, the Board, by parity of reasoning, would presumably find no justification and therefore a violation, in other cases arising in other states where this action is repeated, not to support, but to circumvent public policies which, to the contrary, allow such benefits.[25] Thus in future cases of this type, the Board would be under a self-imposed burden to make an initial inquiry into and perhaps construe originally, the various applicable state statutes. The Board's power to find and to remedy unfair labor practices ought not to "hinge on the myriad provisions of state unem-

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[24] See cases at ftn. 12, supra.

[25] See e.g.: Purdon's Penna. Stat. Ann., Tit. 43 § 802 (d) and Minn. Stat. Ann. § 268.09 1 (b), which expressly exempt from disqualification those unemployed because of a lockout. Thus the Pennsylvania statute has been held constitutionally to pay benefits to strikers (Boyertown Burial Casket Co. v. Commonwealth, 79 A. 2d 449); and the Minnesota statute has been construed so as to make eligible those employees locked out by members of a multiemployer unit in response to the union's strike against two other members of the unit (Bucko v. J. F. Quest Foundry Co., 38 N. W. 2d 223, 235).

ployment compensation laws."[26] For, as the Supreme Court had held in a slightly different context but in language we think applicable here,[27] "any failure of respondent to qualify for a lower tax rate would not be primarily the result of federal but of state [unemployment compensation] law, designed to effectuate a public policy with which it is not the Board's function to concern itself."

Thus we hold on the facts of this case that Respondents' action in locking out their recalled employees on April 20, 1957, was a manipulation of tenure and terms of employment which infringed upon the collective bargaining rights of these employees and tended to discourage support of the Union and concerted activity for mutual aid or protection in violation of Section 8 (a) (3) and (1) of the Act. Where, as here, the discrimination had the natural tendency to discourage union membership or activity, specific evidence of anti-union animus and intent to cause such discouragement is not a prerequisite to finding a Section 8 (a) (3) violation, as Respondents contend.[28] This is nothing more than an application of the familiar common law rule which holds a man accountable for the foreseeable consequences of his own conduct.[29]

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[26] Cf. Gullet Gin Company v. N. L. R. B., 340 U. S. 361, 365.

[27] Idem.

[28] Rockaway News Supply Company, Inc., 94 NLRB 1056, 1059 and cases there cited.

[29] Radio Officers' Union v. N. L. R. B., 347 U.S. 17, 45.

3. Renunciation of prior bargaining commitments

The record shows, as we so find, that beginning on February 22, 1957, Respondents bargained in good faith until an impasse developed on April 12, 1957, when the Union rejected Respondents' last amended offer and, on the following day, struck Buttrey, one member of the multi-employer unit. Thereafter, Respondents were relieved of any duty they may have been under to adhere to previously-made bargaining concessions and were free to withdraw, as they did on April 15, 1957, their rejected "final proposal" and to renounce the terms of the old, expired contract which had been continued in effect by mutual consent of both parties thereto.[30] Accordingly, we hold that, contrary to the General Counsel's contention, Respondent did not thereby refuse to bargain in good faith within the meaning of Section 8 (a) (5).

4. Unilateral action

Following a bona fide impasse such as occurred in this case, the obligation of the Employer to resume negotiations is dependent upon a bona fide request therefor, provided that such further negotia-

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[30] Celanese Corporation of America, 95 NLRB 664, 665 (ftn. 1). See also Clinton Foods Inc., 112 NLRB 239, 262-263; Fehr Baking Company, 104 NLRB 241, 245.

tions would not be clearly futile.[31] This does not mean, however, as Respondents apparently argue, that they were free, following the impasse and in absence of a union request to bargain, unilaterally to institute partial reemployment. This contention ignores the fact that the impasse was followed by the Union's protected strike action against Buttrey, in which event the duty to bargain continued.[32] Indeed, as the Court of Appeals for the Second Circuit has held, "the need for carrying out that obligation when a strike is in progress is all the greater in order that a peaceful settlement of the dispute may be reached." [33]

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[31] Jefferson Standard Broadcasting Company, 94 NLRB 1507, 1515, aff'd sub nom 346 U. S. 464. Accord: N. L. R. B. v. Sands Mfg. Co., 306 U. S. 332, 343-344, holding that after a good faith impasse the burden of renewing negotiations is upon the employees.

[32] Amalgamated Association v. W. E. R. B., 340 U. W. 383, 398-399; Lion Oil Co. v. N. L. R. B., 352 U. S. 282. The strike here against one member of the multi-employer unit is a permissible economic weapon under the Act. Morand Bros. Beverage Co. v. N. L. R. B., 190 F. 2d 576, 582 (C.A. 7); Section 13 of the Act. It is, therefore, to be distinguished from a partial unprotected strike against a single employer which suspends the employer's duty to bargain and leaves him free to resort to such self help as discharging or locking out the employees while they are engaged in such activity. See e.g., Textile Workers Union of America, CIO (Personal Products), 108 NLRB 743; Valley City Furniture Co., 110 NLRB 1586, enf'd 230 F. 2d 947 (C.A. 6); Pacific Telephone and Telegraph Company, 107 NLRB 1507.

[33] N. L. R. B. v. Pecheur Lozenge Co., 209 F. 2d 393, 403 (C.A. 2).

If Respondents were under a duty to bargain with the Union about the partial reemployment, and we have held they were, this obligation was not met by merely notifying the Union that the terms of the old contract would no longer apply and then offering the specific new terms directly to the employees. As the Supreme Court has stated,[34] "[E]mployer action to bring about changes in wage scales without consultation and negotiation with the certified representative of its employees cannot logically or realistically be distinguished from bargaining with individuals or minorities * * * Such unilateral action * * * interferes with the rights of self-organization by emphasizing that there is no necessity for a collective bargaining agent." No bargaining on the question of partial reemployment had taken place, and thus there could be no bargaining impasse which would alone have entitled the employers unilaterally to institute terms which had previously been proposed to and rejected by the Union.[35]

However, where, as here, the union acquiesces in the unilateral employer action, the Board has held that such unilateral conduct does not constitute a refusal to bargain.[36] In this regard, the record shows that Respondents, by letter dated April 15,

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[34] May Stores Co. v. N. L. R. B., 326 U. S. 376, 384.

[35] See N. L. R. B. v. Crompton-Highland Mills, Inc., 337 U. S. 217, 224-225.

[36] Mitchell Plastics, Inc., 117 NLRB 597, enforced 42 LRRM 2028 (C.A. 6); Frohman Manufacturing Co., Inc., 107 NLRB 1308.

advised the Union that Respondents thereby withdrew assent to the terms of the old, expired contract and thereafter, on April 17, issued written notice of recall to the locked-out employees to return to work on April 19, 1957, at specified hours. This reemployment, it is stipulated, was offered under the terms and conditions set forth in the April 15 letter to the Union the effect of which, inter alia, was to eliminate any guaranteed minimum hours per work week or day. It is therefore reasonable to infer that, although no employees represented by the Union were then working, they having been previously locked out, this letter to the Union carried with it implied notice that if these employees did work, they would be required to work under the revised terms and conditions. Moreover, it is further stipulated that these employees, before accepting this work, sought the Union's advice; and that when they returned to their old jobs, as requested by the Union, Respondents then candidly told them the purpose of the partial reemployment. Thus, the Union was fully apprised of Respondents unilateral action, declined to request bargaining about this matter and acquiesced therein by expressly instructing the employees to accept. Accordingly, such conduct was therefore not a refusal to bargain under Section 8 (a) (5) of the Act.

IV. The Remedy

The activities of the Respondents set forth above under the heading, III. The unfair labor Practices, 2. The partial lockout, occurring in connec-

tion with the operation of the Respondents described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof. Therefore, the Board, having found that Respondents have engaged in certain unfair labor practices, shall order that Respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Conclusions of Law

1. The Respondents, Great Falls Employers Council, Inc., Retail Food Dealers Division, and its member employers, are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Retail Clerks International Association, Local No. 57, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By discriminating in regard to the tenure and terms of employment of employees, thereby discouraging membership in and support of the Union and concerted activity for mutual aid or protection, the Respondents have engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By such discrimination, the Respondents have interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act and have thereby engaged in un-

fair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. The Respondents have not engaged in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders:

I. That the complaint in this case in so far as it alleges that the Respondents herein engaged in unfair labor practices within the meaning of Section 8 (a) (5) of the Act be, and it hereby is dismissed.

II. That the Respondents, their officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Retail Clerks International Association, Local No. 57, AFL-CIO, or any other labor organization of its employees, by discriminatorily locking out, laying off, or reducing the work week of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act;

(b) In any like or related manner interfering

with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole all employees whose names are listed in Appendix A, attached hereto, for any loss of pay they may have suffered by reason of the discrimination by paying to each such employee a sum of money equal to that amount he would normally have earned during the period from April 19, 1957 to April 26, 1957, inclusive, less his net earnings during such period.

(b) Post in their respective Great Falls, Montana, stores, copies of the notice attached hereto as Appendix B.[37] Copies of said notice, to be furnished

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[37] In the event that this Order is enforced by a decree of the United States Court of Appeals, the notice shall be amended by substituting for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondents' representatives, be posted by Respondents immediately upon receipt thereof, and be maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(c) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze and compute the amount of back pay due under the terms of this Order;

(d) Notify the said Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

Dated, Washington, D. C., April 29, 1959.

BOYD LEEDOM, Chairman,
STEPHEN S. BEAN, Member,
JOHN H. FANNING, Member,
[Seal] National Labor Relations Board.

Members Philip Ray Rodgers and Joseph Alton Jenkins, concurring in part and dissenting in part:

We agree with the majority that under the

Board's Buffalo Linen doctrine, as approved by the Supreme Court,[38] the nonstruck employer members in the unit lawfully locked out their employees in response to the Union's tactic of calling a "whipsaw" strike against one member of the unit in support of bargaining demands against all. We also agree that these Respondents' unilateral action in offering their employees enough work presumably to disqualify them from receiving unemployment insurance, thus reducing the lockout to one that was partial, was not a refusal to bargain under Section 8 (a) (5) of the Act because the Union acquiesced therein by instructing its members to return to work on the new terms. However, we cannot conclude as does the majority that, on the stipulated facts in this case, the layoff inherent in the partial lockout was a violation of Section 8 (a) (3) and (1) of the Act and would, therefore, dismiss the complaint in its entirety.

On this aspect of the case, we cannot subscribe to the rationale implied in the majority's decision, that Respondents were strangers to the Montana unemployment fund and had no standing to protect it from misuse as a union strike fund. On the contrary, unemployment compensation payments are made to qualified employees by the states out of funds derived wholly from employer tax contributions thereto and are designed to carry out a policy

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[38] N. L. R. B. v. Truck Drivers Union (Buffalo Linen Supply Company), 313 U.S. 87, affirming 109 NLRB 447.

of social betterment for the entire state.[39] Furthermore the state courts have held that it is therefore not only a contributor's right but his duty to see that the "purpose and full integrity" of the fund is preserved.[40] Accordingly, the Respondents herein, as contributors, were under a primary duty to preserve the Montana fund for the benefit of the class of employees preferred by the statute,[41] i.e., those "persons unemployed through no fault of their own," and to resist depletion of the fund by ultra vires payments to those whose unemployment was voluntary and in fact caused by a labor dispute (i.e., a lockout) deliberately precipitated and anticipated by the Union when it ordered the strike against Buttrey.

Moreover, the Respondents had an economic interest in the impact which such disbursements would have on their future liability under the state statute. Instead of requiring all employers to contribute a uniform percentage of their payrolls to unemployment compensation funds, all states now use some type of sliding scale based upon the individual employer's unemployment experience.[42] Un-

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[39] Gullet Gin v. N. L. R. B., 340 U.S. 361, 364; see also Local 1400 (Pardee Construction), 115 NLRB 126, 129.

[40] Chrysler Corp. v. Smith, 297 Mich. 438, 298 N.W. 87, 92-93. See also Tube Reducing Corp. v. Unemployment Comp. Com'n., I.N.J. 177, 62 A. 2d 473, 475.

[41] 6 Revised Codes of Montana (1947), § 87-102.

[42] See Larson & Murray, The Development of Unemployment Insurance in the United States, 8 Vand. L. Rev. 181, 205 (1955).

der the "reserve-ratio" plan, the experience rating device apparently used by Montana and about 32 other states, memorandum accounts are created for each employer.[43] Since a state's allowance of benefits to employees is charged to their employer's memorandum account, which is the most significant factor in computing his contribution ratio, the employer's economic interest therein becomes real.[44] Thus, such agency allowance of benefits as Respondents in this case sought to circumvent places the employer in the anomalous position of supporting, through his own contributions, workers on strike against him.[45]

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[43] See Temple S. Novack, Experience Rating: Its Objections, Problems and Economic Implications, 8 Vand. L. Rev. 376, 391 (1955).

[44] Pennsylvania Chamber of Commerce v. Jorquato, 386 Pa. 306, 125 2d 755; 6 Revised Codes of Montana (1957) Cum. Supp., § 87-107 (d).

[45] Cf. Tube Reducing Corp. v. Unemployment Comp. Com'n., I.N.J. 177, 182, 62A. 2d. 473, 475, in which the court stated:

> The policy of denying access to the fund as a means of sustenance to those unemployed because of participation in a labor dispute is outstanding; and it would seem to be axiomatic that the employer also has a special interest sufficient to justify his interposition to prevent the use of the fund, created to relieve unemployment that is in fact involuntary, and made up in substantial part by his contributions * * * for the advancement of the interest of the adversary parties to the labor dispute, and so to preclude misuse of the fund constituting in effect governmental intervention in aid of a party to a labor dispute in violation of the clear legislative policy.

The mere fact that a union representing all the employees in a multi-employer unit chooses, as in this case, to strike only one member of the unit, instead of all, warrants an inference that it is out to undermine the employers' collectivism for mutual aid and protection which is the fundamental aim of bargaining on a group basis. This technique, if successful, permits the union to avoid the economic hardships of a full-blown strike, because it then has only a relatively few members dependent upon its treasury for sustenance and a host of others still at work in the nonstruck plants who can support, through their earnings, their fellow employees who have sacrificed their wages and lent their ebullience to picketing the struck plant. However, since our decision in the Buffalo Linen case, the nonstruck employers are no longer required thus to underwrite the effectiveness of the union's strike and may, by locking out their employees, subject them to the same economic pressures felt by the strikers.

Thus, the record shows that the nonstruck Respondents originally locked out their employees and thereby regained that equality of collective bargaining power to which they are entitled under the Act. These were the rights—including the right to make the lawful lockout effective—which the state action threatened to diminish. For, if, as the evidence here clearly shows Respondents had good reason to fear, the commission should sustain the locked-out employees' applications for unemployment compensation and order immediate payment of $32 per week

to each claimant out of funds exacted, in part, from these very employers, this state intervention would not only tend to undermine the effectiveness of the lockout but also would literally compel these employers to do indirectly what they had just rightfully refused to do directly, i.e., to subsidize their workers' strike action. It is therefore a manifest absurdity to say, as does the majority, that Respondents, by recalling these employees for $16 worth of work and again laying them off for the purpose of disqualifying them under the state unemployment compensation statute, were "not seeking to protect their legitimate interest in bargaining on a group basis." Indeed, this action was calculated to, and did, protect the unit by preserving for the Respondents the quiet enjoyment of other rights in the Buffalo Linen case.

We find no warrant in the law for holding, as does the majority, that the Respondents, under the circumstances of this case, must view with equanimity the prospect of the state, presumably committed to a position of neutrality in labor disputes, about to place its thumb upon the Union's side of the scales. If, under the Act which we administer, the Union can resort to a state law for a collateral benefit which upsets the balanced bargained relationship contemplated by the Act, then even-handed justice requires that the employer also be allowed to resort to self-help consistent with local law in order to restore a partial status quo. Faced with a "Hobson's choice," the nonstruck employers did no more than to pay each of those employees

who accepted their offer wages of $16 per week for services rendered instead of indirectly subsidizing him to the extent of $32 for striking. As the Supreme Court has admonished the Board,[46] "Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task." [47] The decision here falls quite wide of that mark.

Dated, Washington, D. C., April 29, 1959.

PHILIP RAY RODGERS, Member,
JOSEPH ALTON JENKINS, Member,
National Labor Relations Board.

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[46] Southern S.S. Co. v. N. L. R. B., 316 U.S. 31, 47.

[47] Gullet Gin v. N. L. R. B., 340 U.S. 361, 364, relied upon by the Board, is not to the contrary. In Gullet Gin, the Supreme Court merely held that the Board's discretion was not abused by excluding unemployment insurance benefits from interim earnings in computing a discriminatee's back pay award.

APPENDIX "A"

Listed below under the names of the respective Respondents are the names of the employees who were discriminatorily laid off by said Respondents on April 20, 1957, and permanently reinstated on April 26, 1957, in accordance with the terms of the new contract.

Safeway Stores, Inc.

Store #1855—Central Avenue

Fate Brewer, Jr.
Glenn Bridgeforth
*Richard Konesky
*Leonard Moyer
*Ben Peterson
Helen Pittman
Billy B. Young

Safeway #1856—North

Arlene Bauer
Margaret Clausen
*Robert A. Dull
Jean Hallan
Richard L. Hamers
Lydell Jurasek
Phil A. Keller
Cecelia Krall
June M. Leiby
Jack McConnel
Neil J. McRorie
*Stanley A. Marko
Patrick Lyons
*Aaron Peterson
*David S. Scott
*John Scott
Grace Simonton
*Joseph Super
Lionel Swanson, Jr.
Alice Lonnaine Tenney

Safeway #1857—West Side

Rose Marie Andrews
Marion R. Crawford
Herbert F. Hart
Patrick O'Connell
Peder G. Pederson
Joyce Ann Perrigo
*William Puzon
Arthur L. Raunig, Jr.
Dorothy K. Rio
Freeda Rosbarsky
Donna J. Sanders
*Frank Searl
Margaret Tempel
Leah Walbon

Safeway #1865—Southeast

Louise Armstrong	Irmen L. D. Knerr
Helen M. Axtman	Nettie Korin
Verna Brown	Alvin Ladd
*Charles Bundi	Peter K. Meras
Dolores Daniels	*Dan Meyer
Charlotte Goldberg	Joseph Meyer
Jack Itami	Paul Pfeifle
Frances E. Kelly	

Paul A. Matteucci, d/b/a Matteucci's Super Save Market

Verlyn Brown	Irene I. Major
Joseph Chambers	Thomas S. Marshall
*Lorrin A. Darby	*Jerry Mitchell
*Gayle Garrity	Doris Paulson
*Richard Gasvoda	*Donn Peterson
Charlene Gleason	George F. Potts
Everett W. Greenbush	Robert E. Purcell
Patsy A. Holmes	Dewain D. Ryan
*Arlee Javner	Darrell D. Schwen
Gertrude Kendall	Daryl A. Soltesz
*Barbara Koesler	Leonard J. Weaving
Doris Madison	*Stuart Wilson

Paul A. Matteucci, d/b/a Southgate Super Save Market

Madlee Anderson	Lucille Habel
Helen M. Burns	*Tony Kraft
Helen P. Gabbert	*Ken Roeben, Jr.

* These employees were not "regular" employees, but were "call in" or "student" employees who had worked on an intermittent basis and whose employment during the period of April 20 to April 26, 1957, was less than their part-time work.

Paul A. Matteucci, d/b/a Southgate Super Save Market—(Continued)

Robert C. Gill	Stanley L. Timms
Wilford G. Smith	Helen Wheeler

John Eustance, d/b/a White House Grocery

Joett E. Aman	Laurence Love
Rose Cadieux	Georgia Vining
Harry Kimmerle	

Robert Noble and John H. Noble, d/b/a/ Noble Mercantile Company

William Gosney	Alta Kopetski

APPENDIX "B"

Notice to All Employees: Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in Retail Clerks International Association, Local No. 57, AFL-CIO, or in any other organization of our employees, by discriminatorily locking out, laying off, or reducing the work week of, our employees, or by discriminating in any other manner in regard to

their hire or tenure of employment or any term or condition of employment.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right of self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will make whole all employees named in the attached list for any loss of pay they may have suffered as a result of our discrimination practiced against them.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of the above-named labor organizations or any other labor organization, except to the extent that such right may be affected by an agreement authorized by Section 8 (a) (3) of the Act.

Great Falls Employers' Council, Inc.
Retail Food Dealers Division

Dated.....

By .....
(Representative) (Title)
Safeway Stores, Inc.

By .....
(Representative) (Title)
Paul A. Matteucci, d/b/a Matteucci's Super Save Market

By .....
(Representative) (Title)
John Eustance, d/b/a White House Grocery

By .....
(Representative) (Title)
Paul A. Matteucci, d/b/a Southgate Super Save Market

By .....
(Representative) (Title)
Robert Noble and John H. Noble, d/b/a Noble Mercantile Company

By .....
(Representative) (Title)
E. R. Fjelstad, d/b/a Al's Food Market

By .....
(Representative) (Title)
Wallace Anderson, d/b/a/ Wally's Superette

By .....
(Representative) (Title)
Buttrey Foods, Inc.

By .....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

ORDER CORRECTING DECISION AND ORDER

On April 29, 1959, the Board issued a Decision and Order[1] in the above entitled proceeding.

It Is Hereby Ordered that the said Decision and Order be, and it hereby is, corrected by deleting from page ii of Appendix A the following:

E. R. Fjelstad, d/b/a Al's Food Market
Lucille Sowa

Wallace Anderson, d/b/a Wally's Superette
Lester Oswald

It Is Further Ordered that the said Decision and Order, as printed, shall appear as hereby corrected.

Dated, Washington, D. C., July 9, 1959.

By direction of the Board:

OGDEN W. FIELDS,
Acting Executive Secretary.

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[1] 123 NLRB No. 109.

United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GREAT FALLS EMPLOYERS' COUNCIL, INC., RETAIL FOOD DEALERS DIVISION, AND ITS MEMBER EMPLOYERS, BUTTREY FOODS, INC., SAFEWAY STORES, INC., PAUL A. MATTEUCCI, d/b/a MATTEUCCI'S SUPER SAVE MARKET, PAUL A. MATTEUCCI, d/b/a SOUTHGATE SUPER SAVE MARKET, JOHN EUSTANCE, d/b/a WHITE HOUSE GROCERY, ROBERT NOBLE and JOHN H. NOBLE, d/b/a NOBLE MERCANTILE COMPANY, E. R. FJELSTAD, d/b/a AL'S FOOD MARKET, WALLACE ANDERSON, d/b/a WALLY'S SUPERETTE, Respondents.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board—Series 7, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its

records as Case No. 19-CA-1459. Such record includes the pleadings and stipulation upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copies of charge, amended charges, complaint and notice of hearing and Respondents' answer to complaint, with exhibits A thru E attached.

2. Stipulation dated December 5, 1957, among General Counsel, Respondents and Charging Party, waiving hearing before a Trial Examiner, and making of findings of fact and conclusions of law and issuance of an Intermediate Report and Recommended Order, with exhibits F thru N attached.

3. Order approving stipulation and transferring case to the Board, dated January 24, 1958.

4. Copy of Decision and Order issued by the National Labor Relations Board on April 29, 1959.

5. Copy of Order correcting Decision and Order issued by the National Labor Relations Board on July 9, 1959.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington,

District of Columbia, this 15th day of September, 1959.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 16565. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Great Falls Employers' Council, Inc., et al., Respondents. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed September 16, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16565

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GREAT FALLS EMPLOYERS' COUNCIL, INC., RETAIL FOOD DEALERS DIVISION, AND ITS MEMBER EMPLOYERS, BUTTREY FOODS, INC., SAFEWAY STORES, INC., PAUL A. MATTEUCCI, d/b/a MATTEUCCI'S SUPER SAVE MARKET, PAUL A. MATTEUCCI, d/b/a SOUTHGATE SUPER SAVE MARKET, JOHN EUSTANCE, d/b/a WHITE HOUSE GROCERY, ROBERT NOBLE and JOHN H. NOBLE, d/b/a NOBLE MERCANTILE COMPANY, E. R. FJELSTAD, d/b/a AL'S FOOD MARKET, WALLACE ANDERSON, d/b/a WALLY'S SUPERETTE, Respondents,

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended

by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order dated April 29, 1959, and Order Correcting Decision and Order, dated July 9, 1959, against Respondents, their officers, agents, successors and assigns, Case No. 19-CA-1459.

In support of this petition the Board respectfully shows:

(1) Great Falls Employers' Council, Inc., Retail Food Dealers Division (hereinafter called Division) is an Employer Association of the eight member-employers engaged in business in the State of Montana within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on April 29, 1959, upon stipulation of agreed facts, issued an Order directed to the Respondents, their officers, agents, successors and assigns. Thereafter, on July 9, 1959, the Board issued an Order correcting Decision and Order. On their respective dates, the Board's Decision and Order and Order Correcting Decision and Order were served upon Respondents by sending copies thereof postpaid, bearing Government frank by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript

of the entire record of the proceeding before the Board upon which said orders were entered, which transcript includes the pleadings, stipulation of facts and the Orders of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Orders made thereupon a decree enforcing in whole said Orders of the Board, and requiring Respondents, their officers, agents, successors and assigns, to comply therewith.

Dated at Washington, D. C., this 5th day of August, 1959.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel, National Labor Relations Board.

[Endorsed]: Filed August 7, 1959. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER OF RESPONDENTS TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The Respondents above named respectfully resist the petition of the National Labor Relations Board submitted pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, for the enforcement of its order dated 29 April 1959 and Order Correcting Decision and Order dated 9 July 1959 and issued in Case No. 19-CA-1459.

By way of answer to the petition of the Board and in support of their resistance to the relief sought thereby, Respondents respectfully state that:

1. They admit the matters demonstrated in paragraphs one (1), two (2) and three (3) of the Board's petition for enforcement.

2. Notwithstanding such admissions, the Board is not entitled to the decree of this Court enforcing any portion of the said Orders of the Board in that:

A) The Board erred in its interpretation of the facts and in reaching the conclusion set forth in its decision that "* * * Respondents' action in locking out their recalled employees on April 20, 1957,

was a manipulation of tenure and terms of employment which infringed upon the collective bargaining rights of these employees and tended to discourage support of the Union and concerted activity for mutual aid or protection in violation of Section 8 (a) (3) and (1) of the Act. Where, as here, the discrimination had the natural tendency to discourage union membership or activity, specific evidence of anti-union animus and intent to cause such discouragement is not a prerequisite to finding a Section 8 (a) (3) violation, as Respondents contend. This is nothing more than an application of the familiar common law rule which holds a man accountable for the foreseeable consequences of his own conduct." (Decision and Order, Heading III Paragraph 2, pages 10 and 11.)

B) The Board erred in its interpretation of the law and in reaching the conclusions set forth with respect thereto in that portion of its Decision and Order entitled "Conclusions of Law", as follows:

"3. By discriminating in regard to the tenure and terms of employment of employees, thereby discouraging membership in and support of the Union and concerted activity for mutual aid or protection; the Respondents have engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act."

"4. By such discrimination, the Respondents have interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act and have thereby engaged in

unfair labor practices within the meaning of Section 8 (a) (1) of the Act."

"5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act." (Decision and Order page 14.)

C) The affirmative action prescribed as a remedy by the Board is not designed to effectuate the policies of the Act, when considered in the light of the Board's finding that the parties concluded a new two-year contract under which re-employment became regular, when considered in the light of the motives of both Respondents and Retail Clerks International Association Local No. 57, AFL-CIO, in pursuing their respective courses of conduct during the labor dispute, and when considered in the light of the manner in which this cause was submitted.

Respondents therefore pray that the petition of the Board be dismissed.

Dated at Great Falls, Montana, 26 August 1959.

/s/ HOWARD C. BURTON,
Attorney for Respondents.

[Endorsed]: Filed August 27, 1959. Paul P. O'Brien, Clerk.